

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

February 26, 2021

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Subject: Enforcement Action against Stephen Howard and Yukako Toriyama for Unlawful Collection of Aquatic Life for Aquarium Purposes within the West Hawai'i Regional Fishery Management Area, Island of Hawai'i.

Summary: This submittal requests the Board of Land and Natural Resources find that Stephen Howard and Yukako Toriyama violated Hawaii Administrative Rules ("HAR") §§ 13-60.4-4, 13-60.4-5, 13-60.4-6, 13-60.4-7, and 13-74-20 by possessing illegal aquarium collection gear, illegal fishing gear, and fish collected for aquarium purposes within the West Hawai'i Regional Fishery Management Area ("WHRFMA"); and that Steven Howard further violated HAR §§ 13-241-10, 13-243-1, and 13-244-15.5 by operating a vessel with an expired registration, without required safety equipment onboard, and without possessing a required boater safety certificate. The Division of Aquatic Resources recommends that the Board of Land and Natural Resources approve the following proposed administrative fines: 1) Stephen Howard - **\$59,615**; and 2) Yukako Toriyama - **\$48,800**.

Date of Incident: September 15, 2020

Against: Stephen Howard
Yukako Toriyama

Location of Incident: Within the West Hawaii Regional Fishery Management Area,¹
GPS coordinates: (19.3594°, -155.8915°), Island of Hawai'i, Hawai'i

¹ The WHRFMA extends from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, from the upper reaches of the wash of the waves on shore, seaward to the limit of the States police power and management authority (3 nautical miles). HAR § 13-60.4-2(a).

I. INTRODUCTION

At approximately 08:00 on September 15, 2020, the Department of Land and Natural Resources (“DLNR”) Division of Conservation and Resources Enforcement (“DOCARE”) Officer Christian Purdy received a report from Mike Nakachi (“Mike”) that a known aquarium collector, Stephen Howard (“HOWARD”), had launched his vessel (“HA 7045G”) from Honokohau Small Boat Harbor (“SBH”). Mike reported that he observed what appeared to be aquarium collecting gear onboard the vessel HA 7045G as HOWARD launched it. Upon further investigation, it was discovered that HOWARD and his crew, Hitomi Sasaki (“SASAKI”) and Yukako Toriyama (“TORIYAMA”), had boarded vessel HA 7045G within the West Hawaii Regional Fishery Management Area (“WHRFMA”) without the required safety gear, in possession of illegal fishing gear, and they had illegally trapped known aquarium fish species in traps located within the WHRFMA. DOCARE Officers, along with Division of Aquatic Resources (“DAR”) staff investigated and documented the incident. The DOCARE Report is attached as **Exhibit A**.

DAR recommends that the Board of Land and Natural Resources (“Board”) approve the proposed administrative fines of **\$59,615** against HOWARD and **\$48,800** against TORIYAMA for the unlawful aquarium collection activities.

II. FACTUAL BACKGROUND

A. Recent history of the prohibition on Aquarium Collection in the WHRFMA

The WHRFMA extends from Ka Lae, Ka‘ū (South Point) to ‘Upolu Point, North Kohala, from the upper reaches of the wash of the waves on shore, seaward to the limit of the States police power and management authority (3 nautical miles). The near shore waters of Ho‘okena and the Honokohau SBH are well within the WHRFMA.

It is a violation to possess “aquarium collecting gear” or take or possess any specimen of “aquatic life” for “aquarium purposes” while within the WHRFMA without proper permits under chapter 13-60.4, Hawaii Administrative Rules (“HAR”). A detailed discussion of the legal authority for enforcement of these rules is discussed in section “III,” below.

On September 7, 2017, DAR ceased issuing and renewing West Hawai‘i aquarium permits under HAR § 13-60.4-7(a) and State of Hawai‘i aquarium fish permits under Hawaii Revised Statutes (“HRS”) § 188-31. On October 27, 2017, by court order, all State of Hawai‘i commercial aquarium fish permits were declared invalid.² As of January 5, 2018, there is a total prohibition on all commercial aquarium collection within the WHRFMA. This prohibition includes transit through the WHRFMA with aquarium collection gear or while in possession of live aquatic life.

B. The September 15, 2020 incident

At approximately 08:00 on September 15, 2020, the DOCARE Officer Christian Purdy received a report that a known commercial aquarium fish collector, HOWARD, had launched his vessel

²*Umbergerv. Dept. of Land & Nat. Res.*, 140 Haw. 500, 529, 403 P.3d 277, 306 (2017).

("HA 7045G") from Honokohau SBH. The near shore waters of Ho'okena and the Honokohau SBH are well within the WHRFMA.

At approximately 09:10 Officer Purdy and DOCARE Officer Matthew Gutierrez observed vessel HA 7045G in Kailua Bay with HOWARD on board. At the Kailua Pier, the officers observed HOWARD picking up two female passengers, later identified as Yukako Toriyama ("TORIYAMA") and Hitomi Sasaki ("SASAKI"), after which vessel HA 7045G left Kailua Pier.

Officers Purdy and Gutierrez launched a DOCARE patrol vessel and picked up National Oceanic and Atmospheric Administration ("NOAA") Officer Kyle Murden to investigate. The officers observed vessel HA 7045G near Ho'okena at 19.3594°, -155.8915°. The officers approached vessel HA 7045G for a safety inspection. Officer Gutierrez personally recognized HOWARD and asked if anyone else was on the vessel; HOWARD replied he was alone. Officer Gutierrez then recounted that he observed HOWARD pick up two passengers at Kailua Pier, to which HOWARD replied, "Oh, I just took them to swim with dolphins and dropped them back off." Officer Gutierrez then informed HOWARD that the officers would conduct a safety boarding inspection. Upon inspection, the officers observed that HOWARD's certificate of number (vessel registration) was expired as defined under HAR § 13-241-10. Additionally, HOWARD failed to possess the required boat operator's certificate from a National Association of State Boating Law Administrator as required by HAR § 13-244-15.5 and safety equipment onboard vessel HA 7045G, including a signal conforming to U.S. Coast Guard standards, as required under HAR § 13-243-1.

Due to the observed safety violations, the officers instructed HOWARD to terminate his voyage and return to harbor. HOWARD began to proceed in, but then stopped his boat and inquired about the decision to terminate his voyage. At this time, Officer Murden observed HOWARD reaching into his bag and into the boat center console. Officer Murden then boarded HOWARD's vessel for officer safety. While onboard HOWARD's boat Officer Murden observed gear, which he recognized based on his training and experience as prohibited aquarium collection gear. The officers again asked about the location of the female passengers, HOWARD again denied having any other passengers with him.

HOWARD returned to Honokohau SBH, where he was advised of the violations the officers observed him commit. DOCARE Chief Lino Kamakau met HOWARD and the officers there. When Chief Kamakau again asked HOWARD for the location of the female passengers, HOWARD refused to answer. Chief Kamakau then ordered a search and rescue mission with the assistance of Hawaii Police Department, Hawaii Fire Department, NOAA, and the Coast Guard.

HOWARD was placed under arrest. HOWARD asked, and the officers allowed him, to use his own cell phone to make a call. HOWARD, after allowed access to his cell phone, began to delete text messages from his phone. When the officers attempted to retrieve the phone from HOWARD, HOWARD threw it into the water. Officer Gutierrez recovered the phone from the water.

At approximately 16:30, authorities received reports of two females wearing wetsuits at a gas station and carrying dive gear. The females were subsequently identified as TORIYAMA and

SASAKI. SASAKI told authorities that she had been with HOWARD on vessel HA 7045G earlier in the day and that she and TORIYAMA had been diving to collect fish. SASAKI reported that they surfaced after their dive and could not find HOWARD or his vessel anywhere. According to SASAKI, she and TORIYAMA decided they would leave the fish they trapped in place inside the underwater collection baskets and swam to shore. SASAKI believed she could locate the fish they left trapped in the collection baskets.

At approximately 20:40, Officers Purdy and Gutierrez boarded a NOAA vessel with NOAA Special Agents Dave Carruthers and John Barylsky along with DAR Biologists Nicole Smith (“NIKKI”) and Christopher Teague (“CHRIS”) to attempt to recover the fish left trapped in the collection baskets. NIKKI and CHRIS, following SASAKI’s instructions, were able to locate the aquarium gear, including a “lay net” with approximately one inch stretched mesh, and 235 aquarium fish that SASAKI and TORIYAMA had abandoned. DAR staff, along with the other officers present, investigated and documented the incident.

At the time of the incident, HOWARD’s Commercial Marine License (“CML”), issued pursuant to HAR § 13-74-20(a) and § HRS § 189-2, was expired (#8565 expired June 27, 2020). TORIYAMA’s CML was also expired (#30262 expired March 02, 2018). SASAKI had a valid CML (#17446). None of the individuals possessed a valid State of Hawaii aquarium fish permit allowing possession of specialized aquarium fishing gear under HRS § 188-31, or a valid West Hawaii aquarium permit under HAR § 13-60.4-7(a). Vessel HA 7045G was not registered as an aquarium collection vessel; Vessel HA 7045G did not have the “AQ” marking required to be visible on both sides of an aquarium collection vessel; Vessel HA 7045G did not have an aquarium pennant required for an aquarium collection vessel, all in violation of HAR § 13-60.4-7. Vessel HA 7045G also contained an unpermitted net with a stretched mesh of less than two and three-fourth inches, which also was not marked as aquarium collection gear as required under HAR § 13-60.4-4. Two “slurp guns” were also found onboard. Aside from SCUBA gear, holding containers, and other accessories, no other legal aquarium collecting gear was onboard.

DAR staff NIKKI and CHRIS recovered the fish trapped in the collection baskets left in the water. They quantified and identified the following fish recovered from the collection baskets:

<u>Common Name</u>	<u>Scientific Name</u>	<u>Count</u>
Yellow tang	<i>Zebrasoma flavescens</i>	189
Kole	<i>Ctenochaetus strigosus</i>	18
Lavender Tang	<i>Acanthurus Nigrofusus</i>	11
Chevron Tang	<i>Ctenochaetus Hawaiiensis</i>	6
Agile Chromis	<i>Chromis agilis</i>	5*
Orangeband surgeonfish	<i>Acanthurus olivaceus</i>	2
Multiband Butterflyfish	<i>Chaetodon multicinctus</i>	1
Forcep Butterflyfish	<i>Forcipiger flavissimus</i>	1
Manybar Goatfish	<i>Parupeneus multifasciatus</i>	1*
Ornate Wrasse	<i>Calichoeres ornatissimus</i>	1
Total Fish Count		235
*These species are not on the White List of fish permitted for aquarium collection. See HAR § 13-60.4-7(b).		

On September 16, 2020 at approximately 02:00, after identifying and quantifying all fish specimens illegally trapped and abandoned, DOCARE Officers released all 235 fish back into the ocean waters near where they were collected. These data can be found in the DOCARE Investigative Report attached as **Exhibit A**.

As noted in the DOCARE report, SASAKI has cooperated extensively with DOCARE during the investigation. SASAKI also continues to cooperate with authorities in the enforcement of these violations. In light of SASAKI's substantial cooperation, DAR is not recommending any administrative fine be assessed against SASAKI.

III. LEGAL AUTHORITY FOR ENFORCEMENT

A. WHRFMA Regulations

The WHRFMA is regulated by Hawaii Administrative Rules ("HAR") Title 13, Chapter 60.4.

"Aquarium collecting gear" is defined as "any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles." HAR § 13-60.4-3.

"Aquarium collecting vessel" is defined "as any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals." HAR § 13-60.4-3.

"Aquarium purposes" is defined as "to hold aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes. Aquatic life collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes." HAR § 13-60.4-3.

"Aquatic life" is defined as "any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof." HAR § 13-60.4-3.

"Fishing gear" is defined as "any spear, rod, reel, hook-and-line, slurp gun, or any other equipment or gear adapted, designed, or commonly used to take or capture aquatic life." HAR § 13-60.4-3.

"Lay net" is defined as "a panel of net mesh that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom." HAR § 13-60.4-3

“Take” is defined as “to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or in the shoreline area where aquatic life can be fished for, caught, or harvested, shall be construed as taking.” HAR § 13-60.4-3

“White list” is defined as “a list of species of marine life that may be taken for aquarium purposes.” HAR § 13-60.4-3.

HAR § 13-60.4-2(b)(8) provides, in relevant part, that “[t]he following marine reserves, fish replenishment areas, and netting restricted areas shall be established within the boundaries of the WHRFMA. . . Ho‘okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka‘ū Loa Point.”

HAR § 13-60.4-4(3)(A) provides, in relevant part, that while within the WHRFMA, no person shall “[p]ossess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes: . . . [b]etween sunset and sunrise.”

HAR § 13-60.4-4(3)(B) provides, in relevant part, that while within the WHRFMA, no person shall “[p]ossess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes: . . . [w]ithout holding a valid West Hawai‘i aquarium permit issued pursuant to section 13-60.4-7(a).”

HAR § 13-60.4-4(3)(D) provides, in relevant part, that while within the WHRFMA, no person shall “[p]ossess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes: . . . [w]hile occupying any vessel that does not conform to the registration and marking requirements of section 13-60.4-7(d).³”

HAR § 13-60.4-4(4) provides in relevant part that while within the WHRFMA, no person shall “[p]ossess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment.”

HAR § 13-60.4-5(b)(2) provides, in relevant part, that “[w]hile within the fish replenishment areas described in section 13-60.4-2(b)(2) to (10), or while within any of the areas listed in section 13-60.4-2(c) other than the Kīholo Bay fisheries management area, no person may. . . [p]ossess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes.”

HAR § 13-60.4-6(a) provides in relevant part that “[i]t is unlawful for any person within the West Hawai‘i regional fishery management area to . . . (1) Possess or use a lay net that has not been registered with the department; [or] (3) Possess or use a lay net . . . (B) With less than two and three-fourths inches stretched mesh.”

³HAR § 13-60.4-4(3)(D) incorrectly references section 13-60.4-7(d). The correct reference is HAR § 13-60.4-7(c).

HAR § 13-60.4-7(a) provides in relevant part that “[n]o person, unless exempted from provisions of this chapter by the issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai‘i regional fishery management area without first having been issued and possessing a West Hawai‘i aquarium permit in addition to a valid State of Hawai‘i aquarium fish permit.”

Chromis agilis and *Parupeneus multifasciatus* are not on the White List of fish permitted for aquarium collection with a valid WHRFMA Aquarium Permit. HAR § 13-60.4-7(b).

HAR § 13-60.4-7(c)(1–3) provides, in relevant part that “[a]ll aquarium collecting vessels shall: (1) Be registered every year with the Division of Aquatic Resources West Hawai‘i (DAR-Kona) office to take aquatic life for aquarium purposes within the West Hawai‘i regional fishery management area . . . (2) Clearly display the capital letters ‘AQ’ permanently affixed to both sides of the vessel . . . (3) Fly a ‘stiffened’ flag or pennant from the vessel with the letter ‘A’ as specified by the department. . . . The flag or pennant shall be displayed and clearly visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard.”

B. Commercial Marine License (CML) Regulations

License requirements are found in HAR Title 13, Chapter 74.

A “commercial marine license” is defined as “a license issued to take marine life within or outside the State for commercial purpose.” HAR § 13-74-1.

“Commercial purpose” means “the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.” HAR § 13-74-1.

HAR § 13-74-20(a) states in relevant part that “[n]o person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license.”

C. Fishing Gear Regulations

Fishing gear regulations are found in HAR Title 13, Chapter 75.

“Stretched mesh” is defined as “the straight line distance between two opposite inner edges of each eye of the net mesh as measured when the eye is stretched to its maximum size.” HAR § 13-75-1.

D. Boating Safety Regulations

HRS § 200-31(a) states in relevant part that “[e]very undocumented vessel shall be registered and numbered before its use or operation on or in the waters of the State on an annual basis in accordance with the rules of the department . . .”

HAR § 13-241-10 states in relevant part that “[t]he original certificate of number initially issued to a vessel pursuant to this chapter shall continue in full force and effect for a period ending one year from the date of issuance . . . [a] certificate of number issued pursuant to this chapter may be renewed . . . [a] certificate of number is void after the date of expiration.”

HAR § 13-243-1(a) states in relevant part that “[e]quipment required by vessels on state waters . . . shall conform to the standards set forth in U.S. Coast Guard Navigation Rules.”

HAR § 13-244-15.5(a) states in relevant part that “[a]ny person operating a power driven vessel on the waters of the State shall be required to possess a certificate of completion from a National Association of State Boating Law Administrators.”

E. Administrative Fines Authorized for Violations of HAR Title 13, Chapters 60.4 and 74

HRS § 187A-12.5(c) provides the administrative penalties for violations relating to aquatic resources,⁴ including HAR §§ 13-60.4 (WHRFMA) and 13-74 (CML), as follows:

(1) For a first violation, a fine of not more than \$1,000; (2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.

HRS § 187A-12.5(e) also provides that “[i]n addition to subsection (c), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.” The definition of “aquatic life” includes fish. *See* HRS § 187A-1.

F. Administrative Fines Authorized for Violations of HAR Title 13, Chapters 241, 243, and 244

HRS § 200-14.5(c) provides the administrative penalties for violations relating to boating and ocean recreation,⁵ including HAR §§ 13-241 (Numbering of Vessels), 13-243 (Vessel Equipment Requirements), and 13-244 (Rules of the Road), as follows:

(1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than \$5,000; (2) For a second violation within five years of a previous violation, by a fine of not more than \$10,000; and (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$15,000.

⁴ HRS § 187A-12.5(b) specifically addresses violations involving threatened or endangered species. Subsection (c) covers “all other violations.”

⁵ HRS § 200-14.5(b) specifically addresses violations involving pollution of the waters of the State. Subsection (c) covers “all other violations.”

IV. APPLICATION OF LAW AND RECOMMENDED FINE

A. Applicable violations

The following rules were violated:

- 1) **HAR § 13-60.4-4(3)(A) – possession of aquarium collecting gear, or take or possession of any specimen of aquatic life for aquarium purposes between sunset and sunrise within the WHRFMA.** Both HOWARD and TORIYAMA were in possession of aquarium gear and had taken several hundred specimens of live aquatic life within the WHRFMA until the fish were released by DOCARE Officers at approximately 02:00 on the morning of September 16, 2020.
- 2) **HAR § 13-60.4-4(3)(B) – possession of aquarium collecting gear or aquatic life for aquarium purposes without a valid West Hawai‘i aquarium permit.** Neither HOWARD nor TORIYAMA held a valid West Hawai‘i aquarium permit. They were collectively in possession of aquarium collecting gear on the vessel HA 7045G and live aquatic life collected in the traps in the water.
- 3) **HAR § 13-60.4-4(3)(D) – possession of aquarium collecting gear or aquatic life for aquarium purposes on an unregistered/unmarked aquarium collection vessel.** HOWARD was in possession of aquarium collecting gear onboard vessel HA 7045G, which was an unregistered and unmarked aquarium collecting vessel.
- 4) **HAR § 13-60.4-4(4) – possession of unmarked commercial aquarium collecting gear.** HOWARD and TORIYAMA were collectively in possession of aquarium collecting gear (a small mesh net) onboard vessel HA 7045G, and this gear was not labeled with the CML number or numbers of the person or persons owning, possessing or using the equipment. Without labels to identify who owned, possessed, or used the gear, possession should be attributed to all persons onboard. A similar net was recovered from the location where TORIYAMA left the fish in the collection baskets.
- 5) **HAR § 13-60.4-5(b)(2) – possession of aquarium collecting gear, or take or possession of any specimen of aquatic life for aquarium purposes within a Fish Replenishment Area.** HOWARD and TORIYAMA were collectively in possession of aquarium collection gear and aquatic life for aquarium purposes within the Ho‘okena Fish Replenishment Area, HAR § 13-60.4-2(b)(8).
- 6) **HAR § 13-60.4-6(a)(1) – possession of an unregistered lay net.** HOWARD and TORIYAMA were collectively in possession of an unregistered lay net onboard the vessel HA 7045G. A similar lay net was recovered from the location where TORIYAMA left the fish in the collection baskets.
- 7) **HAR § 13-60.4-6(a)(3)(B) – possession or use of a lay net which is of less than two and three-fourths inches stretched mesh.** HOWARD and TORIYAMA were collectively in

possession of an approximately one-inch meshed net onboard the vessel HA 7045G. A similar lay net was recovered from the location where TORIYAMA left the fish in the collection baskets.

- 8) **HAR § 13-60.4-7(a) – engaging in aquarium collecting activities without a valid State of Hawai‘i aquarium fish permit.** Neither HOWARD, TORIYAMA, nor anyone in the State held a valid State of Hawai‘i aquarium fish permit under HRS § 188-31 at the time of the alleged violations. The presence of aquarium collecting gear onboard HA 7045G and the live aquatic life collected in the traps that remained in the water suggest that it is more likely than not that both HOWARD and TORIYAMA engaged in illegal aquarium collecting activities in the WHRFMA. Although “aquarium collecting activities” is not specifically defined by the rules, DAR has consistently interpreted the term as encompassing all actions, including vessel operation and transportation, associated with the collection of aquarium fish.
- 9) **HAR § 13-60.4-7(b) – possession of non-white list species.** HOWARD and TORIYAMA were collectively in possession of live Agile Chromis (*Chromis agilis*) and Manybar Goatfish (*Parupeneus multifasciatus*) recovered from the traps in the water.
- 10) **HAR § 13-60.4-7(c)(1) – failure to register as an aquarium collecting vessel.** The vessel HA 7045G was not registered as an aquarium collection vessel as required by law. HOWARD was the last registered owner of the vessel HA 7045G.
- 11) **HAR § 13-60.4-7(c)(2) – failure to display the required “AQ” marking on both sides of the vessel.** Vessel HA 7045G did not clearly display the capital letters “AQ” permanently affixed to both sides of the vessel as required by law for aquarium collecting vessels. As the last registered owner of vessel HA 7045G, HOWARD was responsible.
- 12) **HAR § 13-60.4-7(c)(3) – failure to display the aquarium pennant.** The vessel HA 7045G did not fly a “stiffened” flag or pennant from the vessel with the letter “A” as required by law for aquarium collecting vessels with aquarium collecting gear or collected aquarium marine life onboard. As the operator and last registered owner of vessel HA 7045G, HOWARD was responsible.
- 13) **HAR § 13-74-20(a) – take of marine life for commercial purpose without a valid CML.** Neither HOWARD nor TORIYAMA had a valid CML, which is required to take marine life for commercial purpose. The definition of “commercial purpose” includes “the taking of marine life for profit or gain... where the marine life is... landed, or transported for sale anywhere in the State.” Considering the quantity of aquarium fish recovered from the traps and the possession of a CML by SASAKI, it is more likely than not that HOWARD and TORIYAMA took marine life for commercial purpose.
- 14) **HAR § 13-241-10 – period of validity and renewal of certificate of number.** HOWARD’s certificate of number for vessel HA 7045G was expired and therefore invalid.
- 15) **HAR § 13-243-1(a) – distress signals required on vessels.** HOWARD was not in possession of the required distress signal onboard the vessel HA 7045G.

- 16) **HAR § 13-244-15.5(a) – possession of a certificate of completion from a National Association of State Boating Law Administrators.** HOWARD was not in possession of the required certificate of completion onboard the vessel HA 7045G.

B. Maximum authorized fines

HRS § 187A-12.5 authorizes an administrative fine of \$1,000 for a first-time violation of Subtitle 5 of Title 12, HRS (Aquatic Resources and Wildlife), as well as an additional \$1,000 per specimen taken.

HRS § 200-14.5 authorizes an administrative fine of \$5,000 for a first violation of subtitle 8 of Title 12, HRS (Ocean Recreation and Coastal Areas).

As outlined above, HOWARD violated thirteen distinct aquatic resource rules, which carries a maximum fine of \$13,000, and three distinct ocean recreation (boating) rules, which carries a maximum fine of \$15,000, for a maximum total fine of \$28,000; TORIYAMA violated nine distinct aquatic resource rules, which carries a maximum fine of \$9,000.

Given the documented unlawful possession of 235 live fish recovered from the traps, the maximum administrative fine authorized for the specimens taken would be \$ 235,000, attributable to the two respondents jointly and severally.

C. Recommended fines

The Board has broad discretion in assessing administrative fines for violations of the Department's administrative rules.

Aquatic Resource Violations

In 2014, the Board adopted an Administrative Sanctions Schedule to facilitate the standardization of enforcement for violations of aquatic resource laws. This schedule recommends a \$200 fine for each of the applicable aquatic resource violations and a \$200 fine per specimen taken.⁶ Based on this schedule, the recommended fine for aquatic resource

⁶Item 2-3. Category 3 Violations – Unlawful Fishing Gear; Unlawful Vessel Activity.

- (b) A person commits a category 3 violation if he or she violates any of the following provisions:
 - (1) Rules...relating to the use or possession of unlawful fishing gear or methods within any MLCD, Marine FMA, or Freshwater FMA;
 - (2) Rules...relating to unlawful mooring, anchoring, or operation of a vessel within any MLCD, Marine FMA, or Freshwater FMA;
 - (3) Rules...relating to unlawful fishing for aquatic life without an appropriate license or permit, where a license or permit is required; ...
- (c) For category 3 violations, administrative fines shall be imposed as follows:
 - (1) For a first category 3 violation, an administrative fine of up to \$200 shall be assessed...

violations against HOWARD alone (thirteen distinct violations) is \$2,600; the fine against TORIYAMA alone (nine distinct violations) is \$1,800; and the fine against both respondents jointly and severally for the 235 live fish recovered is \$47,000.

Boating Violations

The Board has also adopted an Administrative Sanctions Schedule for certain boating violations. This schedule recommends a \$15 fine for a first violation of HRS § 200-31.^{7, 8} The schedule does not contain recommendations for violations of HAR §§ 13-243-1 (distress signals) or 13-244-15.5 (boating safety certificate). However, these rules involve boating safety and mirror national boating safety requirements. Therefore, the Department recommends the maximum fine of \$5,000 for each of these violations.

Based on the above, the following individual fines are suggested:

Yukako Toriyama

Violations	Fine	Count	Total
Possession of aquarium gear between sunrise and sunset	\$200	1	\$200
No West Hawaii Aquarium Permit	\$200	1	\$200
Unmarked aquarium gear	\$200	1	\$200
Possession of aquarium gear/fish in FRA	\$200	1	\$200
Unregistered lay net in the WHRFMA	\$200	1	\$200
Illegally meshed lay net in the WHRFMA	\$200	1	\$200
No State Aquarium Permit	\$200	1	\$200
Possession of non-white list species	\$200	1	\$200
No CML	\$200	1	\$200
Specimens unlawfully taken/possessed	\$200	235	\$47,000
Total Fine			\$48,800

- (d) In addition to any fines assessed for a category 3 violation... an additional fine shall be assessed for each specimen of aquatic life taken, killed, or injured... as provided for in Items 2-4(c), (d), & (e) of this Administrative Sanctions Schedule.

Item 2-4. Category 4 Violations – Unlawful Extractive Activity.

- (c) For category 4 violations, except as provided in Items 2-4(d) and (e), below, administrative fines shall be imposed as follows:
- (1) For a first category 4 violation, an administrative fine of up to \$200 per specimen shall be assessed...

⁷ Item 3-1. Violations Pertaining to the Registration of Vessels (§200-31, §200-14.5, HRS)

(c) For a first offense of §200-31, HRS, an administrative fine of up to \$15 shall be assessed...

⁸ HRS § 200-31 is implemented by HAR § 13-241-10.

Stephen Howard

Violations	Fine	Count	Total
Possession of aquarium gear between sunrise and sunset	\$200	1	\$200
No West Hawaii Aquarium Permit	\$200	1	\$200
Aquarium gear on unregistered vessel	\$200	1	\$200
Unmarked aquarium gear	\$200	1	\$200
Possession of aquarium gear/fish in FRA	\$200	1	\$200
Unregistered lay net in the WHRFMA	\$200	1	\$200
Illegally meshed lay net in the WHRFMA	\$200	1	\$200
No State Aquarium Permit	\$200	1	\$200
Possession of non-white list species	\$200	1	\$200
Failure to register as aquarium vessel	\$200	1	\$200
Failure to display "AQ"	\$200	1	\$200
Failure to display pennant	\$200	1	\$200
No CML	\$200	1	\$200
Expired Certificate of Number	\$15	1	\$15
Failure to possess distress signal	\$5,000	1	\$5,000
Failure to possess boating certificate	\$5,000	1	\$5,000
Specimens unlawfully taken/possessed	\$200	235	\$47,000
Total Fine			\$59,615

D. Other considerations

In assessing fines, the Board may also consider the market value of the natural resources taken,⁹ as well as pecuniary gains that may be potentially realized by the respondent from an unauthorized commercial activity.¹⁰ The following table shows current retail prices of the unlawfully taken aquarium fish species as listed on three online tropical fish stores on January 4, 2021, as well as the average price per species. The approximate total retail value of the 235 illegally taken specimens is shown in the right-hand column.

Species	LiveAquaria.com price	FreshMarine.com price	Bluezoaqaquatics.com price	Average Retail Price	Count	Total Retail Value
Yellow tang	\$114.99	\$69.98	\$129.99	\$104.99	189	\$19,843.11
Kole	\$99.99	\$82.98	\$99.99	\$94.32	18	\$1,697.76
Lavender Tang	\$34.99			\$34.99	11	\$384.89
Orangeband surgeonfish	\$59.99	\$54.95	\$129.99	\$81.65	6	\$489.90
Chevron Tang	\$349.99	\$185.98	\$699.99	\$411.99	5	\$2,059.95
Agile Chromis	\$29.99			\$29.99	2	\$59.98

⁹HAR § 13-1-70(c)(1).

¹⁰HAR § 13-1-70(c)(7).

Multiband Butterflyfish			\$49.99*	\$49.99	1	\$49.99
Manybar Goatfish			\$49.99	\$49.99	1	\$49.99
Forcep Butterflyfish	\$69.99	\$69.98	\$54.99	\$64.99	1	\$64.99
Ornate Wrasse			\$29.99*	\$29.99	1	\$29.99
TOTAL						\$24,730.55

* Exact species not listed, lowest price listed for a butterflyfish or wrasse

V. RECOMMENDATIONS

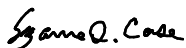
1. That the Board find that Stephen Howard violated HAR §§ 13-60.4-4(3)(A, B & D), 13-60.4-4(4), 13-60.4-4(5)(b)(2), 13-60.4-6(a)(1), 13-60.4-6(a)(3)(B), 13-60.4-7(a), 13-60.4-7(b), 13-60.4-7(c)(1), 13-60.4-7(c)(2), 13-60.4-7(c)(3), 13-74-20(a), 13-241-10, 13-243-1(a), and 13-244-15.5(a).
2. That the Board find that Yukako Toriyama violated HAR §§ 13-60.4-4(3)(A), 13-60.4-4(3)(B), 13-60.4-4(4), 13-60.4-4(5)(b)(2), 13-60.4-6(a)(1), 13-60.4-6(a)(3)(B), 13-60.4-7(a), 13-60.4-7(b), and 13-74-20(a).
3. That the Board not take any administrative action against that Hitomi Sasaki at this time.
4. That the Board assess an administrative fine of \$59,615.00 against Stephen Howard and \$48,800 against Yukako Toriyama to be paid within 60 days of the date of this submittal.

Respectfully Submitted,



Brian Neilson, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Department of Land and Natural Resources

Exhibit A (Item F-1)

HILLO 20-00643



State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

Log Number HA-20-00643	District NORTHERN	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST	Classification TAKE MARINE LIFE FOR COMMERCIAL PURPOSE W/OUT A
Status ARR ARRESTED	Activity Code Protected Fisheries Resources	

Incident and Report Control

A. COMPLAINT

Taken By: **PURDY, CHRISTIAN WN**

Reported Date/Time: **9/15/2020 7:46:00 AM**

How Taken: **PHONE**

Incident Summary: On 09/15/2020 at approximately 1220 hours Stephen HOWARD, M-57 of Kailua Kona was arrested for possessing aquarium collecting gear in the West Hawaii Regional Fisheries Management Area. This in violation of Hawaii Administrative Rule 13-60.4-5(B)(2) "Possess Aquarium Collecting Gear." HOWARD also committed fifteen additional violations. For more information regarding this case please refer to the investigative report.

INV. CONT.

ARRESTED **HOWARD, STEPHEN MICHAEL**

Location: **KONA COAST**

Occurred From: **9/15/2020 0746**
Occurred To: **9/16/2020 0300**

B. REPORT CONTROL

Branch: **HAWAII**

District: **HSOKON**

Lead Investigator: **PURDY, CHRISTIAN WN**

C. NOTES/DISPOSITION/OTHER INFO

Disposition: **ARRESTED**

OCT 20 2020
HILLO OCT 20 2020
KAYSER
10-27-20
A
TODAY
LAWSON

(10)



State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

Log Number HA-20-00643	District SOUTH KONA (HAWAII)	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST	Classification DIV OF AQUATIC RESOURCES
Status ARR ARRESTED	Activity Code Protected Fisheries Resources	

Investigation Report

☒ Fishing ☐ Hunting ☐ Boating ☐ Drug Rel. ☐ Forestry ☐ NOAA ☐ JEA ☐ Land - OCCL ☐ CWRM ☐ Historic ☐ State Parks ☐ KAIC ☐ Other

BASIC

Classification DIV OF AQUAT DIV OF AQUATIC RESOURCES	Source PHONE PHONE
Location of Incident / Intersecting Street HONOKUA AHUPUAA BETWEEN HOOKENA AND PEBBLE BEA HI X-Street:	Island HAWAII Branch HAWAII
Category MARFMA MARINE FMA	Weather CLEAR CLEAR
WEAPONS USED:	

INVOLVED VEHICLES

Type Unknown/Code Not Desc	Vessel/Boat 2003	Year	Make	Model	Color	License / HA Number HA 7045G	Length 25	Involvement SUSPECT VEHICLE
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Person/Vehicle Involvement

OWN/OP
HOWARD, STEPHEN OWN/OP **HA 7045G**

INVOLVED VESSELS / BOATS

U.S.C.G. Number HA 7045G	Vessel Name NO NAME	Use CO	Length 25	Beam	Weight	Involvement Code SUSPV	
Propulsion OB	Engine Type CA	Number of Engines 2	Hull Type FI	Draft Forward	Aft	Registration Number HA 7045G	State HI

PERSONS

Name (Last, First, Middle) HOWARD, STEPHEN MICHAEL	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
--	--------------------------------------	-----	------	-----	---------------

Address [REDACTED]

Category ARRESTED	CODE: ARR	Home Phone [REDACTED]	Other Phone
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Name (Last, First, Middle) TORIYAMA, YUKAKO	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
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Address [REDACTED]

Category SUSPECT	CODE: SUSP	Home Phone [REDACTED]	Other Phone
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Name (Last, First, Middle) NAKACHI, MICHAEL K	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
---	--------------------------------------	-----	------	-----	---------------

Address [REDACTED]

Category WITNESS	CODE: WIT	Home Phone [REDACTED]	Other Phone
----------------------------	------------------	--------------------------	-------------

Name (Last, First, Middle) SASAKI, HITOMI	Juvenile <input type="checkbox"/>	Sex	Race	Age	Date of Birth
---	--------------------------------------	-----	------	-----	---------------

Address [REDACTED]

Category WITNESS	CODE: WIT	Home Phone [REDACTED]	Other Phone
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Name KONA COAST

Category BUSN	Business Address
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Phone 1	Phone 2	Phone 3
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Written By: PURDY, CHRISTIAN WN 9/15/2020	Approved By: Kamakau, Lino M 9/30/2020 8:3	PAGE 1
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State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

Log Number HA-20-00643	Report Number HA-20-00643	District SOUTH KONA (HAWAII)	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST	Classification DIV OF AQUATIC RESOURCES	
Status ARR ARRESTED	Activity Code Protected Fisheries Resources		

SYNOPSIS

Narrative Created By / Date

PURDY, CHRISTIAN WN**10/14/2020**

Approved By / On

On 09/15/2020 at approximately 1220 hours Stephen HOWARD, [REDACTED] of Kailua Kona was arrested for possessing aquarium collecting gear in the West Hawaii Regional Fisheries Management Area. This in violation of Hawaii Administrative Rule 13-60.4-5(B)(2) "Possess Aquarium Collecting Gear." HOWARD also committed fifteen additional violations. For more information regarding this case please refer to the investigative report.

INV. CONT.

ARREST / CITATION / WARNING INFORMATION

Arrest Date 09/15/2020	Person Arrested (Last Name, First, Middle) HOWARD	STEPHEN	MICHAEL	Juvenile
Ticket / Complaint Number C20-11224		Tracking Number 58412R1	Arrest Disposition	Bail
Primary Charge 13-60.4-5(b)(2) POSSESS ANY AQUARIUM COLLECTING GEAR, TAKE OR POSSESS ANY SP				Count(s) 1
Arresting Officer 1 PURDCW PURDY, CHRISTIAN WN		Arresting Officer 2 GUTIM Gutierrez, Matthew		Blood / Alcohol <input type="checkbox"/>
				Arrest <input type="checkbox"/>
				Summons <input type="checkbox"/>

Secondary Charge(s)

Charge 13-60.4-4(3)(B)	Count(s) 1	Description WITHOUT HOLDING A VALID WEST HAWAII AQ
Charge 13-243-1(a)	Count(s) 1	Description EQUIPMENT REQUIRED BY VESSELS ON STAT
Charge 13-244-15.5(a)	Count(s) 1	Description NASBLA APPROVED SAFETY CERTIFICATE OF
Charge 710-1026	Count(s) 1	Description RESISTING ARREST
Charge 707-714	Count(s) 1	Description RECKLESS ENDANGERING IN THE 2ND DEGREE
Charge 13-60.4-7(c)(1)	Count(s) 1	Description REGISTERED EVERY YEAR W/DAR-KONA OFFI
Charge 13-60.4-7(c)(2)	Count(s) 1	Description CLEARLY DISPLAY "AQ" AFFIXED ON BOTH SI
Charge 13-60.4-4(4)	Count(s) 1	Description POSSESS/USE ANY NET/CONTAINER USED UN
Charge 13-75-12.4(a)(2)(B)	Count(s) 1	Description POSSESS/USE WHEN LESS THAN 2-3/4" STRE1
Charge 13-75-12.4(a)(1)	Count(s) 1	Description POSSESS/USE LAY NET THAT HAS NOT BEEN
Charge 13-60.4-4(5)	Count(s) 1	Description POSSESS A LAY NET/ENGAGE IN LAY NET FIS
Charge 13-74-20(a)	Count(s) 1	Description TAKE MARINE LIFE FOR COMMERCIAL PURPO
Charge 13-60.4-4(3)(A)	Count(s) 1	Description POSSESS AQUARIUM COLLECT.GEAR/TAKE/P
Charge 13-60.4-7(c)(1)	Count(s) 1	Description REGISTERED EVERY YEAR W/DAR-KONA OFFI

RESPONDING / INVOLVED UNITS, OFFICERS, AND TIMES

Division HAWA	Supervisor Viloria, Dale K	VILODA
Unit Number 6-22	Officer / ID (Ofcr 1 / Ofcr 2) PURDY, CHRISTIAN WN	Officer / ID (Ofcr 3 / Ofcr 4) PURDCW

Written By: **PURDY, CHRISTIAN WN**
09/30/2020Approved By: **Kamakau, Lino M**

09/30/2020

PAGE 2

**State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement**

Log Number HA-20-00643	Report Number HA-20-00643	District SOUTH KONA (HAWAII)	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST	Classification DIV OF AQUATIC RESOURCES	
Status ARR ARRESTED	Activity Code Protected Fisheries Resources		
6-33	Gutierrez, Matthew	GUTIM	
6-45	Keawe, Kainoa	KEAWK	

SUPPLEMENTALNarrative Created By / Date
Gutierrez, Matthew**09/29/2020**

Approved By / On

INFORMATION

09-15-2020: 0800hrs: Officer PURDY informed me that he received information that a known aquarium collector by the name of Stephen HOWARD has launched his vessel at Honokohau Small Boat Harbor(SBH). He told me that the reporting party said he followed the truck and boat trailer out of the SBH and observed it parked on the side of the road off of Hina Lani St.

AREA CHECKS CONDUCTED

I responded to the area of Hina Lani St. to make checks for the truck and trailer as reported. I was unable to locate the truck or trailer. I returned to the SBH and made checks on the North side of the harbor. All checks resulted with negative results.

At 0820hrs Officer PURDY and I proceeded to continue area checks of Honokohau SBH. We then decided to continue the checks south down Alii Dr. toward Keauhou SBH.

OBSERVATIONS

At approximately 0910hrs I observed a vessel that I recognized as Stephen HOWARD's vessel with in Kailua Bay. PURDY and I parked the truck and walked to the shoreline where we could get a clear view of the said vessel. Using binoculars I confirmed that it was Stephen HOWARD's vessel bearing the vessel number HA 7045 G. HOWARD was observed on board the vessel alone at this time facing Kailua Pier. After sitting in the same spot for a little while he got underway towards the pier. At this time I observed two adult females standing on the pier who appeared to be waiting to get picked up. HOWARD slowly approached the pier and allowed the two females to board his vessel. During this time I snapped a couple of photos of them boarding the vessel. At approximately 0930hrs I observed HOWARD leaving Kailua Bay on his vessel along with two adult females. NOAA Officer MURDEN was then contacted via telephone and informed that HOWARD's vessel was observed leaving Kailua Bay. Officer PURDY told NOAA Officer MURDEN that we were going to attempt to locate HOWARD on the water in which he agreed to join Officers on the patrol.

OCEAN PATROL CONDUCTED

At 0950hrs Officers return to Honokohau SBH and launched the DOCARE vessel to attempt to locate HOWARD on the water. After continues checks heading south, HA 7045 G was located between Hookena and Pebble Beach. As we approached the vessel I observed the vessel get underway in a northern direction along the shoreline. As we approached the vessel to conduct a vessel safety inspection I recognized HOWARD and his vessel. I asked HOWARD if he had any one else with him today. He said he was alone all day. HOWARD was told that he was seen with two female parties on board his vessel. HOWARD said "Oh, I just took them to swim with dolphins and dropped them back off". I saw in plain view a large box that was covered with a black tarp along with fishing poles in the pole holders that did not appear to be an any working order.

Written By: **PURDY, CHRISTIAN WN**
09/30/2020Approved By: **Kamakau, Lino M****09/30/2020**PAGE **3**



Log Number HA-20-00643	Report Number HA-20-00643	District SOUTH KONA (HAWAII)	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST	Classification DIV OF AQUATIC RESOURCES	
Status ARR ARRESTED	Activity Code Protected Fisheries Resources		

Officer PURDY conducted a safety inspection on the vessel. During the safety inspection HOWARD seemed upset about it. HOWARD did not want officers to touch his vessel stating that we might sink it. Upon completion of the boarding HOWARD was found to have no current visual distress signals and did not have a valid boaters safety card. Due to safety reasons it was decided to terminate his voyage. It was explained to him that we will be escorting him back to Honokohau SBH. Once under way toward the SBH, HOWARD stopped his vessel and questioned the decision to terminate his voyage. NOAA Officer MURDEN noted that HOWARD was reaching for bags and moving around the center console. NOAA Officer MURDEN boarded the vessel to monitor HOWARD'S suspicious movements. It was explained to him that it was due to him not having up to date visual distress signals and a valid boaters safety card. For full information on the vessel boarding please refer to Officer PURDY's vessel boarding form attached to this report.

During this contact aquarium collecting equipment was observed by NOAA Officer MURDEN and I. A net was observed in plain view inside a back pack as HOWARD transfered in into the live well. Due to my training and experience I recognized this net as a net used in aquarium. Being that the vessel was in the West Hawaii Regional Fisheries Management Area (WHRFMA). HOWARD was in violation of HAR 13-60.4-5(B)(2) Possessing Aquarium Gear in WHRFMA. From this point an inspection for aquarium fish was conducted. Scuba tanks, wet suits, laundry type baskets and a large aquarium live well were observed in plain view. During this inspection coolers with food and snacks were observed indicating more passengers. HOWARD was asked again if he had any one else on board with him. HOWARD said no he has been alone all day. Please refer to NOAA Officer MURDEN's report for further details.

RETURN TO HONOKOHAU SBH/ ARREST

Upon returning to the harbor HOWARD was instructed to dock his vessel at the west boat ramp. It was still unclear of the whereabouts of the two female parties. I referred to a photo which I previously took that morning and noticed items which the females brought aboard still on the vessel. At this point this caused concern for the females safety and location. After discussing the circumstances of this case with Branch Chief Lino KAMAKAU I was instructed that HOWARD to be placed under arrest. On behalf of Officer PURDY I placed handcuffs on HOWARD.

During the time HOWARD was restrained in handcuffs, the decision was made that HOWARD needed to contact someone to retrieve and remove his vessel from the water. HOWARD stated that he needed to use his cell phone to contact his friend to bring his truck and trailer. At this point, HOWARD was privileged to remove one hand from his handcuffs to unlock and use his cell phone to place the call. After the call was made he was observed swiping his phone deleting information off of his phone. I instructed him to stop give me his phone. HOWARD became uncooperative and said no I am not going to give you my phone. I reached out to grab the phone and he attempted to put it in his back pocket. I instructed him again to give me the phone. HOWARD then stated I am going to throw it into the water. At this time I reached for it again as he held it to his chest. I grabbed his hand that was holding the phone. HOWARD attempted to pull his hand out of my control and threw the phone into the water. At that point I attempted to regain control while HOWARD resisted and was uncooperative which caused him to be taken to the ground to be placed in handcuffs again.

EVIDENCE RECOVERED

After new information was gathered on the whereabouts of equipment used for AQ collecting. Officers responded to the area where HOWARD was first contacted on the water. More evidence was recovered from the scene at approximately 0130hrs on 09-16-2020 by this officer. I recovered two scuba tanks one black BCD and regulator, one small eye lay net, one scoop net, laundry-like baskets, and four white probe poles. Please refer to evidence and property receipt #2A for full information. DAR employees counted and released

**State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement**

Log Number HA-20-00643	Report Number HA-20-00643	District SOUTH KONA (HAWAII)	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST		Classification DIV OF AQUATIC RESOURCES
Status ARR ARRESTED		Activity Code Protected Fisheries Resources	

235 live aquarium fish. Please refer to the evidence and property receipt #2B for full information. One BCD/regulator with a yellow nylon dive belt with lead weights attached were also recovered. For full information please refer to the attached property and evidence receipt #2C for full information.

PHOTOGRAPHS

Photographs of all of the evidence recovered from the scene were taken by me. For full information please refer to the attached photograph report.

DISPOSITION

In view of the above information I recommend this case be routed to lead investigator Officer PURDY for his review and final disposition.

INV. REFERRED

INVESTIGATION

Narrative Created By / Date PURDY, CHRISTIAN WN	Approved By / On 10/02/2020
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ASSIGNMENT/ARRIVAL

On 09/15/2020 at approximately 0745 hours I received a call from the reporting party Mike NAKACHI regarding a vessel belonging to Steve HOWARD. NAKACHI stated that he observed HOWARD launching his vessel, a twenty five foot Twin Vee HA 7045 G at the Honokohau Small Boat Harbor. NAKACHI stated that he observed what appeared to be aquarium collecting gear underneath a black tarpaulin on the vessel. I proceeded to Honokohau Small Boat Harbor, and arrived at approximately 0800 hours.

SCENE/LOCATION

The scene of this case is located in the County and State of Hawaii, in the West Hawaii District along the Kona coast. The initial complaint was located at the Honokohau Small Boat Harbor, however as the investigation continued Officers located and intercepted the suspect vessel south of Hookena beach at the approximate coordinates of 19.3594 latitude and -155.8915 longitude. Please refer to attached diagram #1 for more information.

REPORTING PARTY IDENTIFIED

On 09/15/2020 at approximately 0745 hours I received a call from the reporting party identified as;

Mike NAKACHI, [REDACTED]

NAKACHI stated that he was at the Honokohau Small Boat Harbor at approximately 0655 hours when he observed a twenty five foot Twin Vee [REDACTED] being towed by a white Ford F150. NAKACHI stated

Written By: **PURDY, CHRISTIAN WN**
09/30/2020

Approved By: **Kamakau, Lino M**

09/30/2020

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Log Number HA-20-00643	Report Number HA-20-00643	District SOUTH KONA (HAWAII)	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST	Classification DIV OF AQUATIC RESOURCES	
Status ARR ARRESTED	Activity Code Protected Fisheries Resources		

that the driver of the white Ford F150 appeared to be an Asian woman. NAKACHI then observed the vessel owner, Steve HOWARD onboard of the vessel. NAKACHI also observed what appeared to be aquarium collecting gear hidden under a black tarpaulin.

At approximately 0700 hours NAKACHI observed the Asian woman reverse the white Ford F150 with attached trailer and vessel down the launch ramp. NAKACHI then observed the vessel being launched into the water with HOWARD at the helm. The white Ford F150 then drove out of the launch ramp, at this time NAKACHI observed another Asian woman driving a white van follow the white Ford F150 out of the harbor. NAKACHI decided to follow the two vehicles to alert the DOCARE Officers of their location. NAKACHI stated that both of the vehicles were last seen near Hina Lani Street. For more information regarding NAKACHI's observations please refer to the attached Witness Statement Form.

AREA CHECKS

Upon my arrival to Honokohau Small Boat Harbor, I reported the information I received from NAKACHI to Officer Matt GUTIERREZ. Officer GUTIERREZ immediately decided to patrol the area where the vehicles were last seen. I stayed back at the Honokohau Small Boat Harbor to conduct area checks of the waterway. After no sign of the vessel we formulated a plan to use my assigned patrol vehicle to patrol the Honokohau Small Boat Harbor and the surrounding areas in search for the suspect vessel and vehicles. Officer GUTIERREZ and I patrolled the Honokohau Small Boat Harbor and the surrounding areas for approximately one hour, with no sign of the suspect vessel we decided to patrol south along Alii Drive.

SUSPECT VESSEL LOCATED

On 09/15/2020 at approximately 0910 hours Officer GUTIERREZ and I were driving south on Alii Drive when we observed what appeared to be the reported suspect vessel floating in the middle of Kailua Bay. I immediately stopped and parked the vehicle so we could confirm the HA numbers on the vessel. After looking at the vessel in Kailua Bay through my issued binoculars I was able to confirm the HA numbers of the vessel to be HA 7045 G, the same as the suspect vessel. At that time there was only one male occupant on the suspect vessel.

SURVEILLANCE CONDUCTED

Officer GUTIERREZ and I continued to observe the suspect vessel for approximately fifteen minutes. During this time the vessel remained idled in the middle of Kailua Bay. At approximately 0930 the suspect vessel began to move slowly north towards the Kailua Pier. As I looked to the pier I observed what appeared to be two Asian females walking out towards the south end of the pier. The vessel then drove up to the south end of the pier and stopped next to the females. That is when I observed the two Asian females board the suspect vessel. During this time Officer GUTIERREZ took photographs of the suspect vessel and its occupants, please refer to the attached photographs for more information. The suspect vessel then backed away from the south end of the pier, turned around and began to make its way straight offshore.

PATROL VESSEL LAUNCHED

After observing the suspect vessel leave Kailua Bay, Officer GUTIERREZ and I mobilized and launched the DOCARE Patrol Vessel located at Honokohau Harbor. NOAA Officer MURDEN met us at Honokohau Small Boat Harbor to assist us investigation. At approximately 0950 hours we made our way offshore to the last location the suspect vessel was observed. At this time the suspect vessel could not be located. We continued patrolling south conducting vessel checks near the shoreline for approximately one hour.



Log Number HA-20-00643	Report Number HA-20-00643	District SOUTH KONA (HAWAII)	Lead Investigator PURDY, CHRISTIAN WN - PURDCW
Date/Time Reported 09/15/2020 0746	Location KONA COAST	Classification DIV OF AQUATIC RESOURCES	
Status ARR ARRESTED	Activity Code Protected Fisheries Resources		

SUSPECT VESSEL LOCATED

On 09/15/2020 at approximately 1100 hours I observed a vessel stopped near the shoreline south of Ho'okena at the approximate coordinates of 19.3594 latitude and -155.8915 longitude. As we approached, the vessel started to move away from its original position in a north western direction along the shoreline. As we got closer I observed the vessel to be the twenty five foot Twin Vee with HA numbers HA 7045 G with one male occupant on board. The male occupant was sitting on what appeared to be a black tarpaulin. Near the gunwale of the vessel sitting on the deck were four silver colored scuba tanks. I also observed what appeared to be fishing rods in the gunwale of the vessel. Upon further inspection the fishing gear did not appear to be in working condition.

SAFETY BOARDING INITIATED

Upon contacting the sole male occupant of the vessel I informed the male occupant that we were conducting a safety boarding inspection. I requested to see the registration of the boat, his boater's operator card, along with all of the safety gear that he is required to carry on his vessel while offshore in Hawaii waters. The male occupant presented an expired version of the vessel registration and mentioned to me that he did not possess a boater's operator card. I then asked the male occupant for his Driver's License, he produced a Hawaii State Identification Card identifying him as;

Stephen Michael HOWARD, [REDACTED]



During the Safety Boarding Inspection HOWARD appeared to be disgruntled. When asked if Officers could board his vessel HOWARD uttered "No, you might sink it." During the process of completing the Safety Boarding Inspection Form I asked HOWARD if there was anyone else with him, to which he replied "It's just me today guys." HOWARD then mentioned that he was out fishing for "anything that bites." Upon completion of the Safety Boarding Inspection Form HOWARD failed to produce a boater's operator card in violation of Hawaii Administrative Rule 13-244-15.5 "Operation of Power Driven Vessels." HOWARD also did not possess up to date visual distress signals in violation of Hawaii Administrative Rule 13-243-1 "Equipment Required by Vessels on State Waters." At approximately 1114 hours HOWARD's voyage was terminated for not possessing the required boater's operator card and safety equipment.

Before vacating the area Officers asked HOWARD for the location of the two females we observed boarding his vessel this morning, he replied "there is no one else with me." Officers instructed HOWARD to terminate his voyage and head back to the harbor. HOWARD said "Okay" and started to navigate his vessel north towards the harbor. Approximately two minutes later HOWARD's vessel slowed to a stop so he could talk to us. HOWARD uttered "So you guys can just terminate my voyage and tell me to go in?" I explained to HOWARD that he was in violation by not possessing the required boater's operator card and it was unlawful to operate a boat in Hawaii without one. HOWARD then stated "I think you're lying to me but okay." While we were stopped NOAA Officer MURDEN observed suspicious movement by HOWARD and decided to board the vessel for Officer Safety.

OFFICER BOARDING



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On 09/15/2020 at approximately 1118 hours NOAA Officer MURDEN boarded HOWARD's vessel. After boarding HOWARD's vessel NOAA Officer MURDEN inspected the immediate area around HOWARD for Officer Safety. NOAA Officer MURDEN asked HOWARD to open the large white fish box with a black tarpaulin on it. HOWARD removed the black tarpaulin and opened the lid of the box. The white box contained hoses and an aerator system known to be used as an aquarium fish live well. At that time HOWARD moved a backpack into the live well and Officer GUTIERREZ observed what appeared to be a small eye mesh net in the backpack as the backpack opened for a brief moment. Due to Officer GUTIERREZ's experience and training he determined the net to be used for aquarium collecting violating Hawaii Administrative Rule 13-60.4-5(B)(2) "Possess Any Aquarium Collecting Gear in WHRFMA." During the boarding I observed four silver colored scuba tanks, black wetsuits, and eight orange colored baskets all in plain view on HOWARD's vessel. There was a large amount of food found on board suggesting other passengers on the voyage. Officers asked HOWARD where the other passengers were to which he replied, "I am by myself today." At that time Officers instructed HOWARD to drive his vessel back to the harbor. HOWARD navigated his vessel north towards Honokohau Small Boat Harbor. Officers escorted HOWARD and his vessel back to Honokohau Small Boat Harbor maintaining visual contact the entire time.

ARRIVAL TO HONOKOHAU SMALL BOAT HARBOR

On 09/15/2020 at approximately 1210 hours Officers escorted HOWARD's vessel to the west boat ramp dock at Honokohau Small Boat Harbor. After HOWARD docked his vessel I informed HOWARD of the violations that he had committed. At this time DOCARE Branch Chief KAMAKAU arrived on scene to speak with Officer GUTIERREZ and myself about what we had observed that morning at the Kailua Pier. We informed Chief KAMAKAU at approximately 0930 we observed two Asian females board HOWARD's vessel at the south end of Kailua Pier, however when we intercepted HOWARD's vessel the two Asian females were not on board of the vessel. Officer GUTIERREZ then presented the photographs of the two Asian women boarding HOWARD's vessel at the Kailua Pier to Chief KAMAKAU.

When Chief KAMAKAU asked HOWARD where the two women were HOWARD did not say anything and turned his head away from Chief KAMAKAU. Chief KAMAKAU explained to HOWARD that it is critical for the women's safety that he give us their location. Again HOWARD did not say anything about the whereabouts of the two women. At this time after discussing the facts and circumstances of our investigation with Chief Kamakau Officers decided to place HOWARD under arrest. Chief KAMAKAU also initiated a search and rescue mission with the assistance of the Hawaii Police Department, Hawaii Fire Department, NOAA, and the Coast Guard.

ARREST MADE

On 09/15/2020 at approximately 1220 hours HOWARD was placed in handcuffs by Officer GUTIERREZ on my behalf. Chief KAMAKAU continued to question HOWARD about the location of the two women that boarded his vessel that morning. HOWARD looked away from Chief KAMAKAU and did not say anything. While waiting on the dock I was standing next to HOWARD in the escort position when HOWARD softly uttered "Do you wanna see me break these handcuffs? I saw it on TV once." At that time I commanded HOWARD to immediately stop as I felt his arms flex, HOWARD smirked and stopped flexing. HOWARD was restrained by handcuffs as we waited for his friend to pick his vessel up, after waiting for approximately fifty minutes it was determined that HOWARD needed to call his friend to see where he was.

With the supervision of Officer GUTIERREZ and myself, HOWARD was privileged one hand to access his phone to make the phone call. After calling his friend I observed HOWARD going through his text messages and swiping to delete them. Officer GUTIERREZ and I commanded HOWARD to give his phone



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back to us, HOWARD replied "No." HOWARD then attempted to put his phone back into the pocket of his pants. As I reached for his phone Officer GUTIERREZ and I gave HOWARD verbal commands to stop. HOWARD then stated "I'm going to throw it into the water" as he pulled his hand away from mine, and towards his chest. I then commanded HOWARD to stop and give us the phone, HOWARD then pulled his arm away from Officer GUTIERREZ and threw his phone into the water. Officer GUTIERREZ attempted to gain control of HOWARD's left arm, at that time HOWARD pulled his arm away again. HOWARD resisted and was wrestled down to the ground in order for handcuffs to be applied again.

PHONE RECOVERED

On 09/15/2020 at approximately 1310 hours I recovered HOWARD's black iPhone out of the water at Honokohau Small Boat Harbor. The black iPhone was seized as evidence and is currently located in the Division of Conservation Resources Enforcement West Hawaii Evidence room.

EVIDENCE COLLECTED

After the arrest of HOWARD Officers seized the aquarium collecting gear from HOWARD's vessel. For a full report of the evidence collected please refer to Officer Kainoa KEAWE's supplemental report.

TRANSPORT/ADVICE OF RIGHTS ADMINISTERED

On 09/15/2020 at approximately 1320 hours Officer GUTIERREZ and I transported HOWARD to the Kealahou Police Station, we arrived at approximately 1324 hours. During the processing of HOWARD I administered the Division of Conservation and Resource Enforcement Advice of Rights Form. The form states; you have the right to remain silent. You do not have to answer any questions. Anything you say may be used against you in the court of law. You have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer one will be appointed for you before any questioning. If you decide to answer the questions without a lawyer present you will still have the right to stop answering at any time. HOWARD then signed the Advice of Rights Form. When I asked HOWARD if he understood the rights I just read to him, he nodded and initialed "Yes" on the form. When I asked HOWARD if he wanted a lawyer now he nodded and initialed "Yes" on the form. There were no further questions and HOWARD then signed the Advice of Rights Form. For more information please refer to the attached Advice of Rights Form.

RELEASE ON OWN RECOGNIZANCE

HOWARD was processed and assigned a court date of 10/29/2020 at 0830 hours located at the Kona District Court. HOWARD acknowledged and signed the Notice to Appear Form and was released on his own recognizance. During the booking process my name was not listed in the Hawaii Police Department system, therefore the arrest in the Hawaii Police Department system is under Officer GUTIERREZ. For more information regarding the Notice to Appear Form and Booking Sheet please refer to the attached document.

FEMALES LOCATED

On 09/15/2020 at approximately 1630 hours I received information regarding two Asian women wearing wetsuits and possessing dive gear in South Kona. The two females were located at a Shell gas station in Captain Cook. HPD was contacted to pick up the two females and transport them to the Honokohau Division

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of Conservation and Resources Enforcement office for questioning. The two females arrived to the Honokohau office at approximately 1715 hours.

FEMALES IDENTIFIED

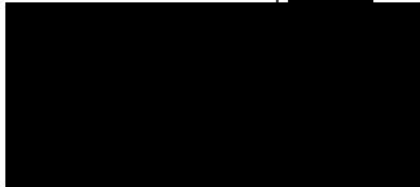
The two females arrived to the Honokohau office and identified themselves as;

Hitomi SASAKI, [REDACTED]



And;

Yukako TORIYAMA, [REDACTED]



It was noted that TORIYAMA is HOWARD's wife.

WELFARE CHECK OF SASAKI

On 09/15/2020 at approximately 1740 hours I conducted a welfare check of SASAKI. I asked SASAKI if she was okay and if she needed any medical attention. SASAKI stated "I am so sorry about everything, I am okay." I explained to SASAKI that there were multiple agencies searching for her and TORIYAMA and everyone was ecstatic to hear of their safe return to shore.

INTERVIEW OF TORIYAMA

At this time Officer KEAWE conducted an interview with TORIYAMA, please refer to Officer KEAWE's supplemental report for more information.

ADVICE OF RIGHTS ADMINISTERED

On 09/15/2020 at approximately 1804 hours I administered the Division of Conservation and Resources Enforcement Advice or Rights Form to SASAKI. The form states; you have the right to remain silent. You do not have to answer any questions. Anything you say may be used against you in court of law. You have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer the questions now without a lawyer present, you will still have the right to stop answering at any time and talk to a lawyer. SASAKI signed the Advice of Rights Form. When I asked SASAKI if she understood the rights that I read to her she initialed "Yes" on the form. When I asked SASAKI if she wanted a lawyer now she initialed "No" on the form. When I asked SASAKI if she was willing to answer questions and make a

Written By: **PURDY, CHRISTIAN WN**
09/30/2020

Approved By: **Kamakau, Lino M**

09/30/2020

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statement she initialed "Yes" on the form. When I asked SASAKI if she wanted a lawyer during the interview she initialed "No" on the form. SASAKI then signed the Advice of Rights Form. For more information please refer to the attached Advice of Rights form.

INTERVIEW WITH SASAKI

On 09/15/2020 at approximately 1815 hours I conducted an interview with SASAKI. I asked SASAKI to run through the events that had occurred that day from start to finish. SASAKI stated that she dropped off HOWARD and his boat at the Honokohau Small Boat Harbor at approximately 0700 hours. TORIYAMA was also at the Honokohau Small Boat Harbor waiting in another vehicle. HOWARD told SASAKI and TORIYAMA to meet him at the Kailua Pier where he would pick them up. SASAKI stated that HOWARD does not stay at the harbor to avoid detection. SASAKI stated that she parked the truck and trailer at a boatyard across the street from Honokohau Small Boat Harbor. After dropping the truck off, TORIYAMA came by in her vehicle to pick up SASAKI, they then proceeded to Kailua Pier. SASAKI stated that she and TORIYAMA walked out to the south end of the Kailua Pier to meet HOWARD on the boat.

After boarding the boat HOWARD drove straight off shore to avoid detection. I asked SASAKI where they went and she stated that they stopped in a cove in between Hookena and Pebble Beach. SASAKI stated that they prepared for the dive and got into the water at approximately 1055 hours. She stated that she jumped into the water with the net and scuba gear. The long white poles, orange colored baskets, and scoop net was given to her by HOWARD while she was in the water. At that time TORIYAMA also jumped into the water. SASAKI stated that their dive time was approximately fifty minutes and in that time SASAKI and TORIYAMA used the long white poles to herd the fish into the small eye mesh net. They then used a small scoop net to transport the fish out of the small eye mesh net and into the orange colored baskets. SASAKI estimated they had captured approximately two hundred fish in the fifty minute dive.

Upon surfacing they could not locate HOWARD's vessel, they waited approximately fifteen minutes and determined that they should swim to shore because "somethings wrong." SASAKI stated that they left all of the captured fish and aquarium collecting gear in fifty feet of water and proceeded to the shoreline. Once they made it to the shoreline they took of their tanks, and weight belts then decided to make their way to the nearest road. SASAKI and HITOMI walked up a trail and onto the highway where they eventually were picked up and dropped off at the Captain Cook Shell gas station. SASAKI stated that she used to work with HOWARD when aquarium fishing was legal, but ever since it was shut down she hasn't worked with him since. She stated that HOWARD reached out to her recently after not talking to him for a long time. SASAKI stated that HOWARD pays her four dollars per yellow tang that she collects for him. After she collects the fish, she has nothing to do with the selling and shipping of the fish. SASAKI stated that all of the aquarium collecting gear belonged to HOWARD. The only things that belonged to her were a regulator and a BCD. I asked SASAKI if she could identify the area where she left the captured fish and aquarium gear and she replied "Yes." SASAKI then agreed to accompany Officers to the area where she left the captured fish and aquarium gear.

NOAA VESSEL LAUNCHED

On 09/15/2020 at approximately 2040 hours Officer GUTIERREZ and I joined NOAA Officer MURDEN, NOAA Special Agent CARRUTHERS, and NOAA Special Agent BARYLSKY on the NOAA Patrol Vessel in search of the aquarium fishing gear. We were accompanied by Aquatic Biologists Nicole SMITH and Christopher TEAGUE from the Division of Aquatics. SASAKI was also on board to verify the exact location of the aquarium gear. The NOAA vessel departed from Honokohau Small Boat Harbor at approximately 2050



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hours. We made our way south to the approximate location of the aquarium gear. After rigorously searching the shoreline for approximately fifty minutes we were able to locate the exact location SASAKI and TORIYAMA exited the water from. At approximately 2330 hours TEAGUE swam to the shore and observed two silver colored scuba tanks along with two weight belts stashed behind rocks along the shoreline. TEAGUE retrieved the two scuba tanks and weight belts from shore and then handed them to Officer GUTIERREZ aboard the NOAA vessel. Please refer to Officer GUTIERREZ supplemental report for more information regarding the recovery of evidence.

AQUARIUM COLLECTING GEAR LOCATED

On 09/16/2020 at approximately 0000 hours TEAGUE and SMITH prepared a dive to find the aquarium collecting equipment and captured fish. SASAKI informed TEAGUE and SMITH that the captured fish and aquarium collection gear was located along the fifty foot contour line. TEAGUE and SMITH proceeded to enter the water to search the area. After approximately thirty minutes of diving TEAGUE and SMITH surfaced and informed Officers that the gear could not be located. At that time TEAGUE and SMITH boarded the NOAA vessel to prepare for a second dive. At approximately 0100 hours TEAGUE and SMITH entered the water for a second dive. After approximately twenty minutes of diving TEAGUE and SMITH surfaced and informed Officers that they located the captured fish and aquarium collecting gear. TEAGUE and SMITH took photographs of the gear in place and then proceeded to retrieve the captured fish and aquarium collection gear. All captured fish and aquarium collection gear was recovered by Officer GUTIERREZ, please refer to his supplemental report for more information. At that time I took multiple photographs, please refer to the attached photographs for more information. TEAGUE and SMITH assisted Officer GUTIERREZ with the counting of the recovered fish. For more information regarding the amount and specific species of fish please refer to the attached Division of Aquatic Resources fish report. After recovering and counting all of the fish and aquarium collecting gear we made our way north back to Honokohau Small Boat Harbor. We arrived to the harbor at approximately 0300 hours.

VIOLATIONS

HOWARD committed the following violations;

- Hawaii Administrative Rule 13-60.4-5(B)(2) "Possess Aquarium Collecting Gear."
- Hawaii Administrative Rule 13-244-15.5 "Operation of Power Driven Vessel."
- Hawaii Administrative Rule 13-243-1 "Safety Equipment Required."
- Hawaii Revised Statute 710-1026 "Resist Arrest."
- Hawaii Revised Statute 707-714 "Reckless Endangering in the Second Degree."
- Hawaii Administrative Rule 13-60.4-4(3)(A) "Possess Aquarium Gear in WHRMA."
- Hawaii Administrative Rule 13-60.4-4(3)(B) "Possess Valid Permit."
- Hawaii Administrative Rule 13-74-20(A) "Commercial Marine License."
- Hawaii Administrative Rule 13-60.4-7(C)(1) "Aquarium Collection Registration."
- Hawaii Administrative Rule 13-60.4-7(C)(2) "Display AQ on Vessel."
- Hawaii Administrative Rule 13-60.4-7(C)(3) "Fly Stiffened AQ Flag."
- Hawaii Administrative Rule 13-60.4-4(4) "Possess/Use Net for Aquarium Collection."
- Hawaii Administrative Rule 13-60.4-4(5) "Engage in Lay Net."
- Hawaii Administrative Rule 13-60.4-7(b) "Take/Possess Species Not Listed on White List."
- Hawaii Administrative Rule 13-75-12.4(a)(2)(B) "Lay Nets Less Than 2 ¾ Inches Stretched Mesh."
- Hawaii Administrative Rule 13-75-12.4(a)(1) "Lay Nets Not Registered."



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For more information on the rules and regulations regarding these violations please refer to the attached rules and regulations.

TORIYAMA VIOLATIONS

Upon further investigation it was determined that TORIYAMA was in partnership with her husband HOWARD. Therefore TORIYAMA committed the following violations;

Hawaii Administrative Rule 13-60.4-5(B)(2) "Possess Aquarium Collecting Gear."
Hawaii Administrative Rule 13-60.4-4(3)(A) "Possess Aquarium Collecting Gear in WHRMA."
Hawaii Administrative Rule 13-60.4-4(3)(B) "Possess Valid Permit."
Hawaii Administrative Rule 13-74-20(A) "Commercial Marine License."
Hawaii Administrative Rule 13-60.4-4(4) "Possess/Use Net for Aquarium Collection."
Hawaii Administrative Rule 13-60.4-4(5) "Engage in Lay Net."
Hawaii Administrative Rule 13-60.4-7(b) "Take/Possess Species Not Listed on White List."
Hawaii Administrative Rule 13-75-12.4(a)(2)(B) "Lay Nets Less Than 2 3/4 Inches Stretched Mesh."
Hawaii Administrative Rule 13-75-12.4(a)(1) "Lay Nets Not Registered."
Hawaii Administrative Rule 13-245-9(a) "Dive Flag Required."

For more information regarding these violations please refer to the attached rules and regulations.

CONNECT UP REPORT

This Report HA-20-00643 is the Master Report for Report HA-20-00681. Please conduct all investigations for Report HA-20-00681 under this Master Report HA-20-00643.

PHOTOGRAPHS

During the investigation of this case I took multiple photographs, please refer to the attached photographs for more information.

DISPOSITION

Due to the information provided by the report above, I recommend this case be closed as the suspect HOWARD was arrested and charged.

CLOSED: ARREST AND CHARGED



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IMAGES



Photo depicts HOWARD's expired vessel registration and State identification presented during Safety Boarding.



Photo depicts orange colored baskets observed in the cabin of HOWARD's vessel.



Photo depicts Officers escorting HOWARD's vessel back to Honokohau Small Boat Harbor.



Photo depicts HOWARD's arrival to Honokohau Small Boat Harbor

CC Purdy



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IMAGES



Photo depicts fishing gear onboard of HOWARD's vessel. Fishing poles are broken and have no fishing reel attached.



Photo depicts two (2) silver colored scuba tanks secured to HOWARD's vessel.



Photo depicts two (2) more silver colored scuba tanks secured to HOWARD's vessel.



Photo depicts eight (8) orange colored baskets Officers observed in the cabin of HOWARD's vessel.



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IMAGES



Photo depicts two (2) orange colored baskets found by the Division of Aquatics divers at the dive site.



Photo depicts white colored small eye mesh net and white "tickle sticks" recovered by Division of Aquatics divers at dive site.

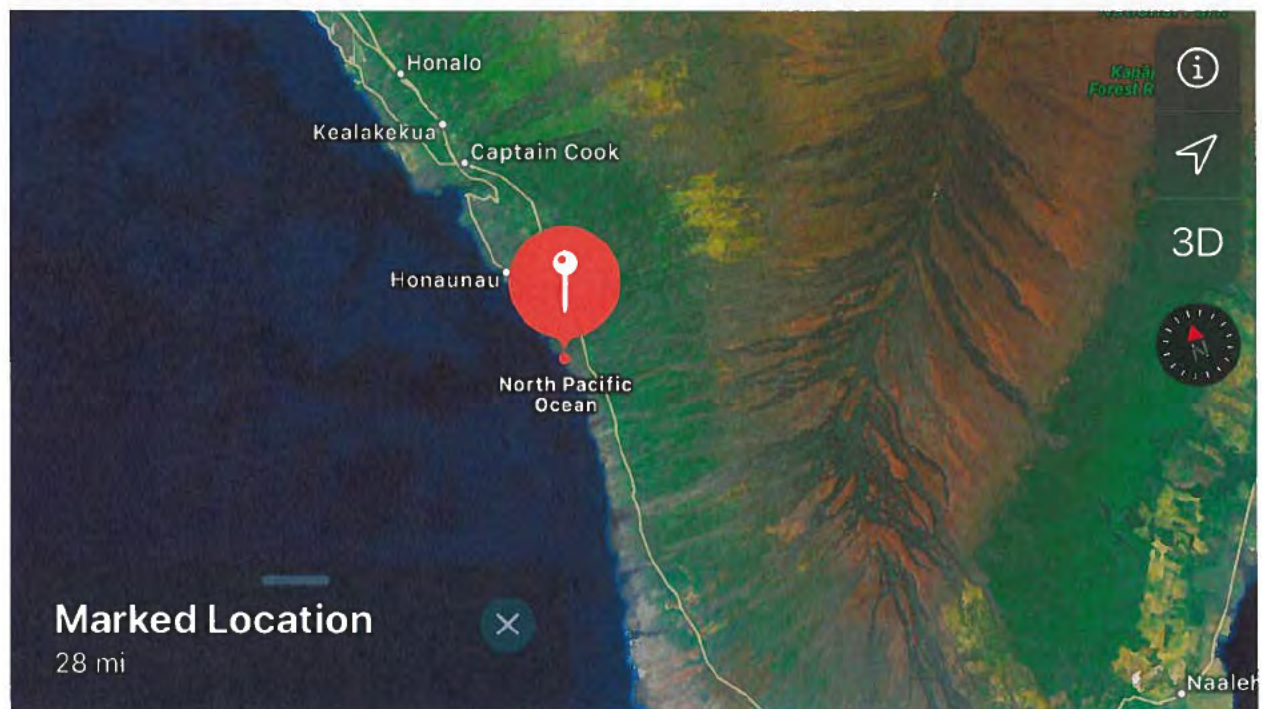
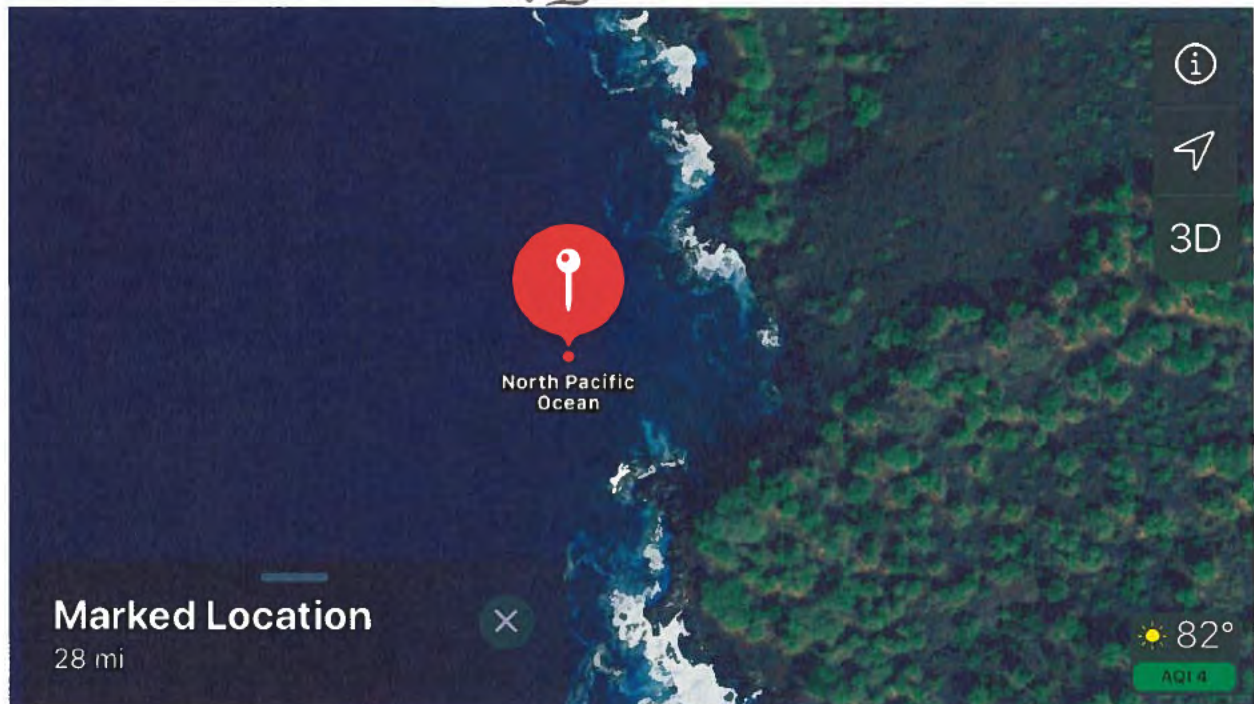


Photo depicts Division of Aquatics divers counting the fish from the orange colored baskets.

BB KS

Diagram #1 Officer Christian PURDY

CP



The top diagram depicts approximate location HOWARD's vessel on initial contact. The bottom diagram depicts the approximate location where the aquarium collecting gear was recovered by Division of Aquatic Resources divers. **Diagram shown is not to scale**



BASIC

PROPERTY / EVIDENCEPAGE 7

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74-380 Kealakehe Pkwy.
Kailua-Kona, HI 96740

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OFCR. K. KEAWE

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WH
MPA:
PROHIBITED ACTIVITIES

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INFORMATION RECEIVED:

On 09-15-20 at approximately 0745 hours, information was received via telephone from NOAA L.E.O CARRUTHERS. CARRUTHERS stated that he had received a phone call from Mike NAKACHI, that Stephen HOWARD, a known aquarium fish collector, was seen leaving Honokohau Small Boat Harbor. This information was passed on to Ofcrs. GUTIERREZ and PURDY at which time it was discovered that NAKACHI, had also contacted and informed PURDY about HOWARD.

On 09-15-20 at about 0920 hours, information was received from GUTIERREZ, that he located HOWARD'S vessel in Kailua Bay. GUTIERREZ stated that he would remain in the area to keep a visual on HOWARD. At about 0930 hours, I was heading down Palani Road, when I received additional information from GUTIERREZ that he observed HOWARD to have picked up two female parties from Kailua Pier. GUTIERREZ stated that it appeared that HOWARD was leaving Kailua Bay. I informed GUTIERREZ that I was in the area and would keep a visual on which direction HOWARD would head, while GUTIERREZ would prepare to launch the DOCARE vessel.

OFFICERS OBSERVATIONS:

Upon arriving in the area I was travelling south on Alii Drive towards Kailua Bay. As I approached Kailua Bay, I observed HOWARD'S vessel begin to leave Kailua Bay heading in a westward direction. I recognized the vessel leaving Kailua Bay as HOWARD'S from a previous photo I had seen of HOWARD'S vessel. The photo was taken on a previous date, while HOWARD was in Honokohau Harbor. I identified HOWARD's vessel in Kailua Bay as a white in color vessel, dark trim, and a brown in color canvas top. I maintained a constant visual on the vessel while parked in the driveway adjacent to the Fish Hopper restaurant.

I remained at my location and continued to watch as HOWARD slowly left the bay and proceed in a westward direction. I was unable to make out any occupants onboard the vessel, due to its distance offshore, as it continued heading west. After monitoring HOWARD for several minutes it appeared that HOWARD's vessel began to make a slight change in direction. It appeared that HOWARD began heading in a southwest direction. After a few minutes of making this observation, it became difficult to keep a visual on HOWARD as the vessel was now a ways offshore. Information was relayed to GUTIERREZ as to the last direction HOWARD was observed heading and that HOWARD'S vessel could no longer be seen.

ADDITIONAL INFORMATION RECEIVED:

On 09-15-20 at about 1120 hours, information was received from Branch Chief Lino KAMAKAU, that GUTIERREZ did make contact with HOWARD out on the ocean in the area of Hookena and Pebble Beach. A boarding was done on HOWARD'S vessel at which time it was discovered that there were some safety equipment violations and that his voyage was being terminated. Information was also received that HOWARD was the only one onboard his vessel. GUTIERREZ was in the process of escorting HOWARD back to Honokohau Small Boat Harbor.

SOH DLNR/DAR
74-380 Kealakehe Pkwy.
Kailua-Kona, HI 96740

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OFCR. K. KEAWE

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WH
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OFFICERS OBSERVATIONS:

On 09-15-20 at about 1215 hours, contact was made with GUTIERREZ at the west launch ramp at Honokohau Small Boat Harbor. Upon arrival I observed HOWARD'S vessel tied off to the finger pier as well as the DOCARE vessel. GUTIERREZ and PURDY, as well as a NOAA LEO, were observed standing on the pier and appeared to be speaking to HOWARD who was standing on his vessel. As I approached, I heard GUTIERREZ asking HOWARD as to the whereabouts of the two female parties that were observed onboard HOWARD'S vessel. HOWARD would respond that there were no females with him and that he was the only one on his vessel that day. The importance of locating these females as well as to their overall safety and wellbeing was stressed to HOWARD. HOWARD would respond again stating that he was the only one on his vessel or by not answering at all. Shortly after, KAMAKAU arrived on scene and again stressed the importance of locating the two females, after which HOWARD stated that he wanted a lawyer.

It was at this time that HOWARD was escorted off of his vessel and placed under arrest. HOWARD was asked about the location of his boat trailer as many boats were coming in, attempting to port, and causing congestion at the west launch ramp. HOWARD stated that his friend was on his way and should be at the ramp shortly. It was at his time that I was conducting checks via our DLNR database, to see if there was any information such as businesses, licenses, and known associates that could be linked to HOWARD to help identify the identity of the two females. While making these checks, I was located in my truck, at the water's edge of the boat ramp, fronting HOWARD'S vessel. It was at this time I heard a commotion come from the finger pier where GUTIERREZ, PURDY, and HOWARD were located. As I looked up, I observed HOWARD to be laying on the pier and GUTIERREZ and PURDY attempting to restrain HOWARD. As I approached them I could hear GUTIERREZ and PURDY giving HOWARD clear and direct commands to stop resisting. It was revealed that HOWARD had thrown his cell phone in to the water, after which it was subsequently recovered.

HOWARD was then escorted up the ramp and placed in a DLNR vehicle to await transport to HCPD Kona station for processing. Information was later received that HOWARD'S friend who was identified as Bob, would be arriving at the boat ramp to standby with HOWARD'S vessel. At about 1430 hours, HOWARD'S friend, later identified as Bob LIKINS, arrived at the vessel and stated he would wait for HOWARD'S return. LIKINS stated that he did not have a key to drive down HOWARD'S truck and trailer. LIKINS also stated that he could not get the boat trailer off of HOWARD'S vehicle, to place on to his vehicle.

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OFCR. K. KEAWE

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EVIDENCE RECOVERED:

On 09-15-20 at about 1430 hours, gear consistent with aquarium fish collecting was recovered from HOWARD'S vessel as evidence. Refer to the attached Property and Evidence Receipt for more information.

PHOTOGRAPHS:

Photos were taken depicting the aquarium gear collected. Refer to the attached Photographic Record for more information.

FEMALE DIVERS LOCATED:

Information was received from KAMAKAU that two females in wetsuits and in possession of dive gear were located at a gas station in Capt. Cook. HCPD was on scene with the two females and arrangements were being made to transport these females to the DOCARE Honokohau Office for identification and to obtain a statement. HCPD arrived at the office with the two females at about 1700 hours.

TORIYAMA IDENTIFIED/CONTACTED:

On 09-15-20 at about 1720 hours I contacted:

Yukako TORIYAMA, 



Upon contact with TORIYAMA, I observed her to be wearing a full body wetsuit that was tattered around the knees and belly area. TORIYAMA also had in her possession a pair of diving fins. I informed TORIYAMA that we had been concerned for her safety as two females matching her and SASAKI'S description, were seen leaving Kailua Bay earlier that morning onboard HOWARD'S vessel. TORIYAMA was asked if she and SASAKI were the females that left Kailua Bay with HOWARD at which time she stated yes. TORIYAMA was asked if she was okay and or needed any medical attention.

PAGE 4 OF 6

TORIYAMA IDENTIFIED/CONTACTED CONTIUED:

TORIYAMA stated that she was fine and declined any medical attention. I informed TORIYAMA that a search had been conducted that day involving different agencies, after HOWARD was located in South Kona waters, and TORIYAMA and SASAKI were not onboard with HOWARD. TORIYAMA was apologetic and thankful for the search efforts

TORIYAMA stated that she and SASAKI were SCUBA diving to an area south of Hookena. TORIYAMA stated she was unsure how far offshore she was but estimated to be in depths of about 25 meters. TORIYAMA stated that she and SASAKI had begun their dive at about 11:00 am that morning. TORIYAMA stated that she and SASAKI had been diving for about forty-five minutes when they had re-surfaced from SCUBA diving. TORIYAMA stated that upon surfacing that the vessel and HOWARD were not in the area. TORIYAMA stated that she and SASAKI had treaded water for about 5 minutes and that HOWARD had still not returned. TORIYAMA stated that she and SASAKI then swam in to shore.

TORIYAMA stated that she was not concerned when she surfaced and found HOWARD not to be in the area. TORIYAMA stated that they, she and HOWARD, planned and trained in the event that if she surfaced after SCUBA diving and HOWARD was not around. TORIYAMA was asked to explain what she meant by planned and trained. TORIYAMA stated that HOWARD likes to go fishing for trevally and that HOWARD may be fishing upon TORIYAMA finishing SCUBA diving. TORIYAMA also provided an example that if "something" came up and HOWARD had to leave, that TORIYAMA would know what to do. I had asked TORIYAMA what it is that she is supposed to do if HOWARD is not around. TORIYAMA stated that she is to swim in to shore and find her way back home.

I has asked TORIYAMA to walk me through the events of the day from the beginning. I had asked TORIYAMA why she and SASAKI did not just leave with HOWARD from Honokohau Harbor. TORIYAMA stated that HOWARD had called her that morning, and told TORIYAMA that he would pick her and SASAKI up from Kailua Pier. TORIYAMA stated that she has done previous dives with HOWARD and that HOWARD does all the planning. TORIYAMA stated that she just tags along. I had asked TORIYAMA upon leaving Kailua Bay which way had they had gone. TORIYAMA stated that they had gone straight out and then started to head in a southerly direction. TORIYAMA stated that she did not know exactly where they were going to dive, but figured it would be someplace down south. TORIYAMA stated that HOWARD decides were they are going to SCUBA dive.

TORIYAMA was asked what the intent for SCUBA diving was that day. TORIYAMA stated that it was to be a "fun dive". TORIYAMA stated that SASAKI is the more experienced diver and that she was just tagging along. TORIYAMA clarified "fun dive" as to just dive. I had asked TORIYAMA if the intent for SCUBA diving was to do any spearfishing and she stated "No." I had asked TORIYAMA if the intent was to do any fishing while SCUBA diving and she stated "No." I had asked TORIYAMA if the intent was to fish for or collect any aquarium fish. TORIYAMA slightly paused and quietly answered "No." I asked TORIYAMA again if she had collected fish for aquarium purposes on

PAGE 5 OF 6

TORIYAMA IDENTIFIED/CONTACTED CONTIUED:

the SCUBA dive at which time she stated "No." Prior to asking TORIYAMA the last two questions, I noticed her hands to be very fidgety, one hand in the other, just constantly moving. When TORIYAMA was asked the last two questions, the fidgeting stopped, and I noticed her left hand to be clutching her right fingers tightly.

I had asked TORIYAMA what is the relationship between her and HOWARD. TORIYAMA stated that HOWARD is her husband. TORIYAMA stated that their relationship is very independent and that they do things on their own. I had asked TORIYAMA what type of business is HOWARD in to. TORIYAMA explained that HOWARD had his own business but was looking to start up something new for himself. TORIYAMA was asked if HOWARD was an aquarium fish collector. TORIYAMA stated not anymore and had not been since the closure. TORIYAMA stated that she and HOWARD are aware of the closure. TORIYAMA was asked if she had a Commercial Marine License (CML). TORIYAMA stated that she had a CML to help HOWARD with the shipping of aquarium fish when HOWARD used to collect. TORIYAMA stated that she did not know any of the business side of HOWARD'S aquarium business. TORIYAMA'S only role was to help in shipping the fish.

It was explained to TORIYAMA that we know that HOWARD still collects aquarium fish for commercial purposes. TORIYAMA was told that HOWARD was arrested earlier that afternoon for being in possession of aquarium gear while in the WHRFMA. TORIYAMA was told that it was also odd that HOWARD would leave her and SASAKI out in the water if they were not doing anything wrong. TORIYAMA was told that the intent that day was not to have a "fun dive", the intent that day was to collect aquarium fish. TORIYAMA had briefly paused and then stated "Yes." I asked TORIYAMA, yes what? TORIYAMA responded, "To collect fish." I asked, to collect aquarium fish? At which time she nodded yes. It was at this time that the interview was stopped and no further questions were asked.

TORIYAMA ADVICE OF RIGHTS:

TORIYAMA was advised of her constitutional rights using the State of Hawaii DLNR DOCARE Advice of Rights form. The form was read verbatim to TORIYAMA. Upon advising TORIYAMA of her rights, I was going to ask her a series of questions. I informed TORIYAMA that I needed her to answer both verbally and by placing her initials from her response in the spaces provided. Upon TORIYAMA answering the questions, TORIYAMA then signed and dated form. Refer to the attached Advice of Rights form for more information.

Prior to conducting the interview, TORIYAMA had asked two questions. TORIYAMA wanted clarification on number 2 on the AOR form; anything you say can be used against you in a court of law. I informed TORIYAMA that I would like to continue to ask her questions, but that any statement she provides, if this investigation goes to court, could be used criminally against her. TORIYAMA stated that she understood. The second question TORIYAMA asked was related to number 5 on the AOR form; if she decides to answer questions now without a lawyer present, that she will still have the right to stop answering at any time. I informed TORIYAMA again, that I would like to continue to ask her questions,

SOH DLNR/DAR
74-380 Kealakehe Pkwy.
Kailua-Kona, HI 96740

09-15-2020
OFCR. K. KEAWE

HA-20-00643
WH
MPA:
PROHIBITED ACTIVITIES

PAGE 6 OF 6

TORIYAMA ADVICE OF RIGHTS CONTINUED:

and that at any time during questioning, she can stop, request a lawyer, and the interview would be over. No more questions would be asked. TORIYAMA stated that she understood.

I had then asked TORIYAMA if she had any other questions and she stated no. TORIYAMA was asked if she would like to continue and she nodded yes.

On 09-15-20 at 1847 hours, I began to interview TORIYAMA. I began the interview by asking TORIYAMA why she and SASAKI met HOWARD at Kailua Pier and had not left Honokohau Harbor with HOWARD. TORIYAMA slightly paused and then stated that she did not want to answer. I had asked TORIYAMA if she did not want to answer the question, at which time she stated yes. TORIYAMA was asked if she wanted to continue this interview, when she again paused, and stated no. I asked TORIYAMA if she wanted a lawyer present and she nodded yes. It was at this time that the interview with TORIYAMA was concluded.

DISPOSITION:

In view of the above information, I recommend this case be continuing, and a copy of this report be routed to the lead investigator, Ofcr. C. PURDY, for his review and information.

INV. CONTINUING

APPROVED

D. Hilonga 09-27-20



K. KEAWE
CREO III
09-23-2020

#241
NH
1100 HRS

INVESTIGATION # HA-20-00643	DISTRICT South Kona	LEAD INVESTIGATOR Ofcr. C. PURDY	KEY REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/>
DATE / TIME REPORTED 09-15-20/0745 Hrs.	LOCATION South Kona	CLASSIFICATION MPA: PROHIBITED ACTIVITIES	CONNECTING REPORT(S)

Report Description: Items recovered as evidence from suspect Stephen HOWARD

Date/Time Taken: 09-16-20/1220 Hrs.

Taken By: Keawe, Kainoa

Scene: South Kona,



Equipment: Iphone

Weather Conditions: Clear

Lighting: Natural

Focus: Auto

1 Photo depicts an overall view of 4 silver in color scuba tanks.



2 Photo depicts an overall view of 2 nylon web dive belts with attached weights.



3 Photo depicts an overall view of 8 orange in color baskets.



4 Photo depicts a close range view of the orange basket.



INVESTIGATION # HA-20-00643	DISTRICT South Kona	LEAD INVESTIGATOR Ofcr. C. PURDY	KEY REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/>
DATE / TIME REPORTED 09-15-20/0745 Hrs.	LOCATION South Kona	CLASSIFICATION MPA: PROHIBITED ACTIVITIES	CONNECTING REPORT(S)

5 Photo depicts an overall view of a back pack with net and other miscellaneous contents.



6 Photo depicts an overall view of the blue colored monofilament lay net having a stretch eye mesh of about one inch.






7 Photo depicts an overall view of 2 slurp guns with a red colored handle.



8 Photo depicts an overall view of 2 scoop nets with a PVC type handle and black mesh netting approximately 18 1/2 and 23 inches in length.



INVESTIGATION # HA-20-00643	DISTRICT South Kona	LEAD INVESTIGATOR Ofcr. C. PURDY	KEY REPORT [X] Yes []
DATE / TIME REPORTED 09-15-20/0745 Hrs.	LOCATION South Kona	CLASSIFICATION MPA: PROHIBITED ACTIVITIES	CONNECTING REPORT(S)

9	Photo depicts an overall view of a scoop net with a metal handle and black mesh netting approximately 24 inches in length.	10	Photo depicts an overall view of the white in color AQ fish live well.
			
11	Photo depicts a mid-range view of the inside of the AQ fish live well.		
			

Dept. DLNR
Div. DOCARE

STATE OF HAWAII
PROPERTY REPORT

DOCARE - 9

EPR #1A

EVIDENCE ☒
FOUND PROPERTY ☐

1. REPORT/CITATION NUMBER
HA-20-00643

CLASSIFICATION
MPA: PROHIBITED ACTIVITIES

2. INVESTIGATOR
C. PARDY CREOI

3. DISTRICT
WH

4. COMPLAINANT'S NAME
DLNR/DOCARE

5. SEX
O

RACE

AGE

6. BIRTH DATE

7. OCCUPATION

8. ADDRESS
35 HOLOMUA ST HILO, HI 96720

9. PLACE EMPLOYED/SCHOOL ATTENDING

Res. Ph.

Bus. Ph.

10. LOCATION OF INCIDENT/INTERSECTING STREET
HOOKENA, HI

11. DATE/TIME/DAY OCCURRED
09-15-20/0745 HRS

12. DATE/TIME REPORTED
09-15-20/0745 HRS

13. REPORTED BY
MIKE NAKACHI

14. SEX

RACE

AGE

15. BIRTH DATE

17. ADDRESS

18. PLACE EMPLOYED/SCHOOL ATTENDING

Res. Ph.

19. PROPERTY OF:
☐ Owner ☐ Victim ☒ Defendant

20. SEX

RACE

AGE

21. BIRTH DATE

22. OCCUPATION

23. ADDRESS

24. PLACE EMPLOYED/SCHOOL ATTENDING
SELF EMPLOYED

Res. Ph.

Bus. Ph.

25. EVIDENCE RECOVERED BY
K. KEAWE

Badge or ID Number
241

26. DATE/TIME RECOVERED
09-15-20/ 1430 hrs

27. INSTRUCTIONS: 1) Insert a synopsis of the crime or incident. 2) Itemize and describe property including values, serial numbers and engravings. 3) Indicate how evidence marked for identification. 4) Use Continuation Page to identify any witnesses or to list additional facts.

Synopsis:

ON THE ABOVE DATE AND TIME, AT THE ABOVE LOCATION, SAID DEFENDANT WAS OBSERVED TO BE IN POSSESSION OF AQ COLLECTING GEAR ONBOARD HIS VESSEL IN THE CLOSED AREA OF THE WHRFMA.

Item Number	Quantity	Description	Value	Engraving and Serial Number
1	4	SILVER IN COLOR SCUBA TANKS.	UNK	N/A
2	2	RED IN COLOR NYLON WEB DIVE WEIGHT BELTS WITH LEAD WEIGHTS ATTACHED.	UNK	N/A
3	8	ORANGE IN COLOR PLASTIC BASKETS WITH AN APPROX 19 INCH DIAMETER.	UNK	N/A
4	1	BLUE AND BLACK IN COLOR "IRONMAN 70.3 HAWAII" BACK PACK WITH A LAY NET AND OTHER MISC. CONTENTS.	UNK	N/A
5	1	BLUE IN COLOR MONOFILAMENT LAY NET WITH WITH A STRETCHED MESH EYE OF ABOUT 1 INCH. NET IS APPROX 24FT IN LENGTH AND 10FT IN HEIGHT.	UNK	N/A
6	2	CLEAR PLASTIC SLURP GUN WITH A RED COLORED HANDLE.	UNK	N/A
7	2	SCOOP NETS WITH A PVC TYPE HANDLE AND BLACK MESH NETTING APPROX 18 1/2 INCH AND 23 INCH IN LENGTH.	UNK	N/A
8	1	SCOOP NET WITH A METAL HANDLE AND BLACK MESH NETTING APPROX 24 INCHES IN LENGTH.	UNK	N/A
9	1	WHITE IN COLOR PLASTIC AQ FISH LIVE WELL, APPROX 53 1/2 INCHES IN LENGTH, 29 INCHES IN WIDTH, AND 27 INCHES IN HEIGHT.	UNK	N/A
10	1	BLACK AND GRAY COLORED "SYAPIX SPORTS" NEOPRENE WETSUIT TOP.	UNK	N/A
*****		***** NOTHING TO FOLLOW *****	****	****

28. CHAIN OF CUSTODY

Item No	From	To	Date	Time
1-10	K. KEAWE #241	<u>[Signature]</u>	09-16-20	1445

29. REPORT WRITTEN BY

Badge No.

Date/Time

Supervisor Approving

Badge No.

30. DISPOSITION

61 ☐ Auction

63 ☐ Ret. to Finder

98 ☐ Records Only

31. EVIDENCE CUSTODIAN

Date/Time

32. DATE/TIME REPRODUCED

33. CONNECTING REPORT NUMBERS

EPR #2C

33 CONNECTING REPORT NUMBERS

Date/Time
09-23-20/0900

INVESTIGATION # HA-20-00643	DISTRICT West Hawaii District	LEAD INVESTIGATOR C. PURDY CREO I	KEY REPORT [X] Yes []
DATE / TIME REPORTED 09/15/2020	LOCATION South Kona	CLASSIFICATION MPA: Prohibited Activities	CONNECTING REPORT(S)

Report Description: Aquarium Gear Prohibited

Date/Time Taken: 09-15-2020/09-16-2020

Taken By: GUTIERREZ

Scene: South Kona

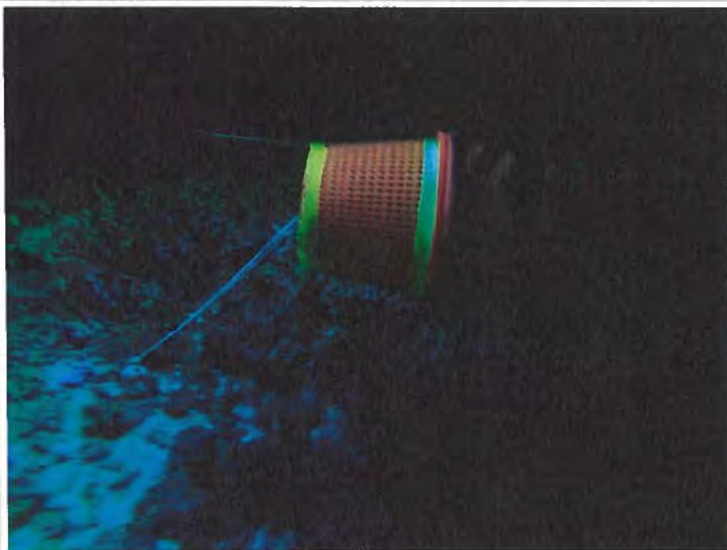
Equipment:

Weather Conditions: Clear

Lighting: Flash

Focus: Auto

1 Depicts laundry type baskets used as fish cage left under water.



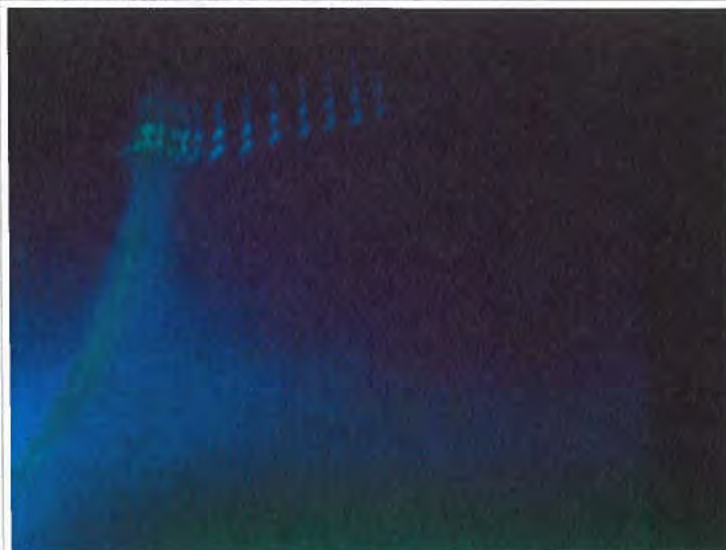
2 Prop sticks and scoop net left in under water.



3 Undersized Lay net under water.



4 Undersized lay net under water.



INVESTIGATION # HA-20-00604	DISTRICT West Hawaii District	LEAD INVESTIGATOR Lino Kamakau	KEY REPORT [X] Yes []
DATE / TIME REPORTED 08/27/2020 8:31:00 AM	LOCATION South Point	CLASSIFICATION Prohibited Activities within Selected Areas (Collecting Aquarium Life)	CONNECTING REPORT(S)

5 Undersized Lay net under water.



6 Scoop net recovered as evidence.



7 Scuba kit recovered as evidence.



8 Scuba kit recovered as evidence.



INVESTIGATION # HA-20-00604	DISTRICT West Hawaii District	LEAD INVESTIGATOR Lino Kamakau	KEY REPORT [X] Yes []
DATE / TIME REPORTED 08/27/2020 8:31:00 AM	LOCATION South Point	CLASSIFICATION Prohibited Activities within Selected Areas (Collecting Aquarium Life)	CONNECTING REPORT(S)

9 Dive belts recovered as evidence.



10 Laundry type baskets recovered as evidence.



11 Live AQ fish recovered and counted before released back in to ocean.



12 Counting live AQ fish.



INVESTIGATION # HA-20-00604	DISTRICT West Hawaii District	LEAD INVESTIGATOR Lino Kamakau	KEY REPORT [X] Yes []
DATE / TIME REPORTED 08/27/2020 8:31:00 AM	LOCATION South Point	CLASSIFICATION Prohibited Activities within Selected Areas (Collecting Aquarium Life)	CONNECTING REPORT(S)

13 Counting live AQ fish.



14 Counting live AQ fish.



15 HOWARD picking up two female parties from Kailua Pier.



16 HOWARD leaving the pier with two female parties.



DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
74-380 B Kealahou Parkway
Kailua-Kona, Hawaii 96740

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

KALEO L. MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Date: September 15-16, 2020

Time: 6:30pm to 3:30am

Place: Ho'okena Area, South Kona, Hawai'i Island

DAR Kona Staff: Christopher Teague and Nicole Smith

Subject/Violations: HAR 13-60.4 West Hawai'i Regional Fishery Management Area (WHRFMA)

- 1) 13-60.4-4 (4) Possession of unmarked commercial aquarium collection gear while on an unregistered aquarium collection vessel.
- 2) 13-60.4-4 (3) (D) Possession of marine life taken with such gear while on an unregistered aquarium collection vessel.
- 3) 13-60.4-7 (C) (1) Unregistered aquarium vessel.
- 4) 13-60.4-7 (B) Two species were collected that are not listed on the West Hawai'i White List of previously permitted species (*Chromis agilis* and *Parupeneus multifasciatus*). Five *Chromis agilis* and one *Parupeneus multifasciatus* were collected.
- 5) HAR 13-75-14 Stephen Howard has an expired Commercial Marine License and therefore would have a limit of five fish per day.
- 6) In October 2017, the Hawai'i Circuit Court ruled that existing 'aquarium' permits (for use of fine mesh nets/traps) were illegal and invalid pending a full review of the fishery under the Hawai'i Environmental Policy Act (HEPA). On January 5th, 2018, a total prohibition of all commercial aquarium collecting in West Hawai'i was announced, including prohibition of transit through the West Hawai'i Regional Fishery Management Area with aquarium collection gear or possession of live marine life.

Description of Events: Nicole Smith (Aquatic Biologist, DAR Kona) received a call at approximately 6:45pm from NOAA Enforcement Officer, Dave Carruthers, regarding an aquarium poaching incident that had occurred earlier in the day. Officer Carruthers requested that DAR biologists visit the collection site due to reports from the suspects that fish were left in nets and containers at the dive site for later retrieval by the suspects. Law enforcement was concerned that if the evidence was left until the next day, the suspect may go to retrieve it and all the evidence would be lost. DAR biologists were concerned that if the animals were left for a prolonged period of time in crowded nets without access to food that it may lead to undue injury, or even mortality of aquatic wildlife. NOAA Office of Law Enforcement (OLE) agents and DOCARE officers wanted to retrieve the fish and all evidence of the poaching incident. Brian Neilson (DAR Administrator) was notified of the operation and gave permission for dive operations outside the normal scope of DAR Kona activities. Christopher Teague (Aquatic Biologist, DAR Kona) was also notified by DAR administration and Lino Kamakau (DOCARE Hawai'i Island Chief) and proceeded to meet with Smith at the DAR Kona office to gather equipment and meet with NOAA OLE agents and DOCARE officers.

At 8:39 pm, NOAA agents, DOCARE officers, DAR biologists and the cooperating suspect all proceeded to make way to the dive site, near Ho'okena Beach Park. Once at the site, officers attempted to locate the dive gear that was left onshore by the suspects, in order to verify the location of the illegal take. This consisted of driving the vessel North and South along the coastline following the directions of the suspect in order to locate the missing dive gear. At approximately 11:30pm, the dive gear was located hidden behind large boulders along the coastline. The equipment was subsequently retrieved and brought back to the NOAA vessel as evidence.

DAR Kona biologists, Teague and Smith, proceeded to prepare their dive equipment and made a dive plan with the NOAA officers. The aquarium collection gear and fish were said to be somewhere in the area in approximately 50ft of water. For the first dive, Teague and Smith entered the water at midnight, and swam south following the 50-foot depth contour. After approximately 30 minutes of diving with no gear located, Teague and Smith surfaced to change tanks and try to talk with the suspect to get a better idea of where the gear was located. For the second dive, Teague and Smith entered the water at approximately 1:00am and swam north following the 50-foot depth contour. After about 20 min, the nets, collection gear, and fish traps with live fish were located. Fishing gear consisted of one small mesh panel net, one small mesh hand net, four plastic rod "tickle sticks", and two plastic fish traps with live fish inside. Photographs were taken of all the gear in place, then all fishing gear was retrieved. Fishing gear and the memory card from the camera were given to the officers as evidence. A third dive was made to retrieve fishes, which were then counted on the boat and released near the collection site. A total of 235 fishes were quantified, identified to species (10), and then released.

Table 1. List of live fish found at aquarium violation site near Ho'okena, South Kona, Hawai'i.

Number	Common Name	Scientific Name
189	Yellow Tang	<i>Zebrasoma flavescens</i>
18	Kole	<i>Ctenochaetus strigosus</i>
11	Lavender Tang	<i>Acanthurus nigrofusus</i>
6	Chevron Tang	<i>Ctenochaetus hawaiiensis</i>
5*	Agile Chromis	<i>Chromis agilis</i> *
2	Orangeband surgeonfish	<i>Acanthurus olivaceus</i>
1	Multiband Butterflyfish	<i>Chaetodon multicinctus</i>
1	Forcep Butterflyfish	<i>Forcipiger flavissimus</i>
1*	Manybar Goatfish	<i>Parupeneus multifasciatus</i> *
1	Ornate Wrasse	<i>Halichoeres ornatissimus</i>
235	TOTAL FISH	

* Species not on West Hawai'i White List of previously permitted aquarium fish.

After the fish were released, the NOAA vessel headed back to Honokōhau Harbor. DAR Kona staff arrived back at Honokōhau Harbor at approximately 3:00am and left the harbor to return home at 3:30am.

Christopher Teague

Sep 17, 2020

Christopher H. Teague

Date

ms

Sep 17, 2020

Nicole J. Smith

Date

REPORT OF
BOARDING

DATE

09/15/2020

BOARDING TIME

1101 hrs

VESSEL DATE	VESSEL NUMBER HA 7045 G		VESSEL NAME No Name		HIN [REDACTED]	
	MAKE Twin Vee		POB	TYPE OF BOAT	PROPULSION	HULL MATERIAL
	MODEL		ADULT SIZE 3	<input checked="" type="checkbox"/> Open M/B <input type="checkbox"/> Cabin M/B <input type="checkbox"/> Sail <input type="checkbox"/> Rowboat <input type="checkbox"/> Canoe/Kayak <input type="checkbox"/> Houseboat <input type="checkbox"/> Inflatable <input type="checkbox"/> Thrillcraft <input type="checkbox"/> Other (Specify):	<input checked="" type="checkbox"/> Outboard <input type="checkbox"/> Inbrd gas <input type="checkbox"/> Inbrd Diesel <input type="checkbox"/> Inbrd/Outbrd <input type="checkbox"/> Jet Propelled <input type="checkbox"/> Sail only <input type="checkbox"/> Manual <input type="checkbox"/> Other (Specify): <input type="checkbox"/> Unknown	<input type="checkbox"/> Wood <input type="checkbox"/> Aluminum <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Fiberglass <input type="checkbox"/> Rubber, Vinyl <input type="checkbox"/> Cement <input type="checkbox"/> Other (Specify): <input type="checkbox"/> Unknown
	MODEL YR. 2003	NET TONS	LENGTH 25'	CHILD SIZE 1	ENGINE COMPARTMENT <input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed (F/E & Vent reg) FUEL COMPARTMENT <input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed (F/E & Vent reg) CONSTRUCTION <input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed (F/E & Vent reg)	
HP 2 x 150 hp	USE 1. Commercial 2. Pleasure 3. Passenger					

OWNER	NAME Stephen M Howard	<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	<input checked="" type="checkbox"/> OWNER WAS OPERATOR <input type="checkbox"/> OWNER ON BOARD NOT OPERATOR <input type="checkbox"/> OWNER NOT ON BOARD <input type="checkbox"/> RENTAL BOAT
	ADDRESS [REDACTED]		OPERATOR COURSES
	CITY [REDACTED]		<input checked="" type="checkbox"/> None <input type="checkbox"/> Coast Guard <input type="checkbox"/> CG Auxiliary <input type="checkbox"/> Power Squadron <input type="checkbox"/> Red Cross <input type="checkbox"/> Public School <input type="checkbox"/> State/county

OPERATOR	NAME Same	<input type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	OPERATOR AGE IF UNDER 18:
	ADDRESS		OPERATOR TELEPHONE:
	CITY	STATE ZIP	

OBSERVED IN USE	BODY OF WATER Pacific Ocean	DETAILED LOCATION North of Pebble beach
	CITY Kailua-Kona	
	COUNTY Hawaii	

VIOLATION (✓ INDICATES DEFICIENCY)		CITATION	UNSAFE CONDITION	CITATION
NUMBERING			UNSAFE CONDITIONS CREATING ESPECIALLY HAZARDOUS CONDITIONS, TERMINATED USE	
CERTIFICATE NOT ONBOARD			OVERLOADED	
DECAL			OVERPOWERED	
PERSONAL FLOTATION DEVICE			OTHER (SPECIFY):	
SOUND PRODUCING DEVICE			OTHER (SPECIFY):	
FIRE EXTINGUISHER			OTHER (SPECIFY):	
BACKFIRE FLAME CONTROL			OTHER (SPECIFY):	
VENTILATION				
NAV./ANCHOR LTS.				
✓ VISUAL DISTRESS SIGNALS	exp 3/14			
✓ NEGLIGENT OPERATION	No safety course			
OTHER (SPECIFY):			ACTION TAKEN	
			CORRECTED ON THE SPOT	
			WARNING ISSUED	
			CITATION ISSUED	
			NO VIOLATION	

REMARKS (Continue on reverse, add extra sheets if necessary):

Expired Flares + No Boaters safety Course Terminate 1114 hrs

BOARDING OFFICER'S NAME C. Purdy	RANK CREW 1	UNIT DOCARE	DISTRICT WIT
DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT DEPARTMENT OF LAND AND NATURAL RESOURCES STATE OF HAWAII		BOARDING OFFICER'S SIGNATURE [Signature]	

HAWAII POLICE DEPARTMENT
STATEMENT FORM

PAGE _____ OF _____ PAGES		REPORT NUMBER _____	DISTRICT _____
STATEMENT OF (NAME): <u>Ruke Nakachi</u>		CLASSIFICATION _____	DATE _____
ADDRESS: _____		COMPLAINANT/VICTIM (NAME): <u>Ruke Nakachi</u>	
AGE: _____		ADDRESS: _____	
RESIDENCE PHONE: _____ BUSINESS PHONE: _____		AGE: _____ DATE OF BIRTH: _____ SOCIAL SECURITY NO. _____	RESIDENCE PHONE: _____ BUSINESS PHONE: _____

Ruke Nakachi

do freely and voluntarily provide the following statement:

Tuesday September 15, 2020, First Seen Steve Howard & Asian Lady
6:55 AM getting fuel or supplies @ Sea Store @ Honolulu Harbor
7:00 EST. Observed Steve Howard & Lady splash in his twin Vee Boat
at Honolulu Harbor. Hauka Boat Ramp. I am on Makai Side, Sun
was intense so I decided to go on Makai Side for better
lighting. Watched a white 4 door truck with a asian looking lady
with a mask on drive the truck and trailer up the Ramp. Steve
Howard was in his boat. HA 7045 G, noticed he was alone but with
black tarps covering gear and trying to cover up items in boat.
7:05 White parked on Makai side of Boat Ramp, I was filming
and concentrating on the activity in front of me. I happened to
look to my left and parked beside me was a white Nissan Van
with another asian lady inside who seen me filming
and was looking at me stunned. Like she had saw a ghost. In the
process I was calling DOCARE and other enforcement agencies
from NOAA/NMFS. Spoke to Lii Purdy @ DOCARE & David Carpenters
to get them involved. I tried to send them pictures & videos of
what was going down, right then.
7:07 AM I decided to follow the two asian ladies knowing they
were associated with Steve Howard and with prior knowledge and
surveillance of seeing these same scheme conducted by
Steve Howard in the past with no seen.

I have read this statement prepared by Ruke Nakachi, which consists
of ☐ typewritten ☒ handwritten pages, and have been given the opportunity to make corrections thereon. I attest that this statement
is true and correct, to the best of my knowledge, and that I give this statement freely and voluntarily without coercion or promise of reward.

SIGNED BY: 	DATE: <u>9.19.2020</u>	TIME: <u>5:00 PM</u>
SIGNED BY: _____	DATE: _____	TIME: _____
SIGNED BY: _____	DATE: _____	TIME: _____

HAWAII POLICE DEPARTMENT
STATEMENT FORM

Page 2 Cont.

PAGE <u>2</u> OF <u>2</u> PAGES			REPORT NUMBER		DISTRICT	
STATEMENT OF (NAME):			CLASSIFICATION		DATE	
ADDRESS:			COMPLAINANT/VICTIM (NAME):			
ADDRESS:			ADDRESS:			
AGE:	DATE OF BIRTH:	SOCIAL SECURITY NO.	AGE:	DATE OF BIRTH:	SOCIAL SECURITY NO.	
RESIDENCE PHONE:		BUSINESS PHONE:	RESIDENCE PHONE:		BUSINESS PHONE:	

1. Luke Nakauchi

do freely and voluntarily provide the following statement:

7:08 followed them out of Honolulu harbor heading north along
Aiea Kachumamu Highway. Eventually they turn back up
Hihiam as if they were heading to his warehouse, but
something peculiar happened. The truck & Trailer went back
but the Nissan Van must have sensed I was a tail on her. She
turns south to go to the Heli gas station. I passed by and
called an informant to let them know that I think I may have
exposed myself. Later I drive around to see where to
get in the truck and trailer is. She is parked off the road
on south shoulder of Hihiam being back. I see her on
the phone and she looks nervous or animated in her phone
conversation not realizing I was driving by filming and observing her.
7:10ish I decide to back to the Heli gas station and notice that
the other gal is not there. I cruise around and later see
her in the Costco parking lot with a confused look. Unsure if
she sees me.
7:11 I notify DOCARE Alii and David Caruthers that they may
be on to me watching them. I send them my pictures
and videos to go to the Harbor to jump on my boat. Obviously I
went North, which was good. Because DOCARE & Authorities
connected the dots later... PICTURES & VIDEOS sent to DOCARE Alii

I have read this statement prepared by Luke Nakauchi, which consists
of ☐ typewritten ☒ handwritten pages, and have been given the opportunity to make corrections thereon. I attest that this statement
is true and correct, to the best of my knowledge, and that I give this statement freely and voluntarily without coercion or promise of reward.

SIGNED BY: 	DATE: <u>9-19-2020</u>	TIME: <u>5:08 PM</u>
SIGNED BY:	DATE:	TIME:
SIGNED BY:	DATE:	TIME:



Hawaii Police Department

Booking Sheet for Inmate # B2006174

Name #: 152021

Name: HOWARD, STEPHEN

Address:

Born:

NO
PHOTO
AVAILABLE

NO
PHOTO
AVAILABLE

Personal Identification

Drivers Lic:

State: CO

Pri Phone:

Local ID:

Sec Phone:

State ID:

Soc. Sec.:

FBI Num:

Physical Description

DOB:

Eyes:

Complexn:

Race:

Glasses:

Build:

Sex:

Hair:

Ethnic:

Hgt:

Hair Style:

Wgt:

Beard:

Assigned Housing: [No code entered]

Booking Date: 13:58:42 09/15/20

Current Location: Kona Booking

Booked By: LLANES B M

Property Bag:

Arrest Info: On the above date and time, in the State and County of Hawaii, in the District of West Hawaii, the above mentioned defendant was processed as an M/P Out Assist, after he was arrested and charged for Prohibited Activities (Possess AQ Gear), in violation of Section 13-60.4-5 (B)(2) of the Hawaii Administrative Rules, as amended. This after DOCARE Officer PURDY, contacted the defendant during a routine vessel inspection of the vessel bearing the # HA 7045 G on the water in the area of Ho'okena Beach. During the boarding the vessel was noted to be deficient in having valid visual distress signals in violation of 13-243-1 HAR. Upon requesting to see the operator/sole occupant of the vessel's Boater's Safety Card, the defendant was unable to produce a valid card which is in violation 13-244-15.5 HAR. At that point the defendant's voyage was terminated by DOCARE Officers. During that time NOAA Officer MURDEN, then boarded the vessel after seeing fishing rods aboard the vessel and then conducted a plain view Fishing Equipment Inspection. During the equipment inspection NOAA Officer MURDEN observed Aquarium collecting gear aboard the vessel (scuba tanks, wet suits, small eye mesh nets, large fish box with aerators, and fish baskets, which is a violation to possess such gear while within the West Hawaii Regional Fisheries Management Area (WHRFMA) Section 13-60.4-5 (B)(2) HAR. During taking the defendant in to custody after he was privileged to use his personal cell phone to make a call to secure his vessel the Def was noted to pull his arms away in a violent manner resisting to be placed in to handcuffs. The Def had to be wrestled to the ground and restrained before handcuffs could be placed on the Def. at Honokohau Small Boat Harbor boat ramp. This arrest/processing was done as a courtesy for DLNR DOCARE. All reports will be documented under DLNR Report #HA-20-00643. NCIC & CJIS Checks conducted, not a convicted felon. CLOSED: ARRESTED AND CHARGED REFER TO OTHER AGENCY

No Active Holds Located

Warr # - CIC	Case#	Description	Charge# - Bail Amt	CRT - DATE	MOD	Arrest Date	Offense Date	Officer	OTN	DISP
-	20-070661	13-60.4-4: ACTIVITIES PROHIBITED WITHIN WEST HAWAII REGIONAL FISHERY MANAGEMENT T AREA	C20-11224 - \$0.00	- - **:***: **/**/**		12:18:00 09/15/20	13:49:46 09/15/20	LLANES B M	58412R1	

-	20-070661	13-60.4-4:	C20-11224 - - **.*.*.*	12:18:00 13:49:46	LLANES B M	58412R1
		ACTIVITIES	\$0.00 **/**/**	09/15/20 09/15/20		
		PROHIBITED				
		WITHIN WEST				
		HAWAII				
		REGIONAL				
		FISHERY				
		MANAGEMENT				
		T AREA				

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

ADVICE OF RIGHTS

Report/Citation # HA-20-00643

I am a Conservation Enforcement Officer. I want to inform you of your rights.

1. You have the right to remain silent. You do not have to answer any questions.
2. Anything you say may be used against you in a court of law.
3. You have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
5. If you decide to answer the questions now without a lawyer present, you will still have the right to stop answering at any time and talk to a lawyer.

The Advice of Rights was administered to

Stephen HOWARD

By CRED L C. PURDY #230
Conservation Enforcement Officer

Kona Police station
Location

09/15/2020
Date

1438 hrs
Time

WAIVER OF RIGHTS

1. Do you understand the rights that I have just read to you? Yes ~~Yes~~ No ~~No~~
2. Do you want a lawyer now? Yes ~~Yes~~ No ~~No~~
3. Are you willing to answer questions and make a statement? Yes ~~Yes~~ No ~~No~~
4. Do you want a lawyer during this interview? Yes ~~Yes~~ No ~~No~~

M GUTIERREZ
Witness

[Signature]
Subject's Signature

9-15-2020
Date

14:40 hrs
Time

9 15 2020
Date

2:40 pm
Time

Refused to sign / /

All the foregoing was translated into

By

Remarks:

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

ADVICE OF RIGHTS

Report/Citation # _____

I am a Conservation Enforcement Officer. I want to inform you of your rights.

1. You have the right to remain silent. You do not have to answer any questions.
2. Anything you say may be used against you in a court of law.
3. You have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
5. If you decide to answer the questions now without a lawyer present, you will still have the right to stop answering at any time and talk to a lawyer.

The Advice of Rights was administered to Hitomi Sasaki
By CREO C. Purdy #230
Conservation Enforcement Officer

Honokohau DOCAE OFFICE 9/15/2006 1804
Location Date Time

WAIVER OF RIGHTS

- | | | | |
|----|--|----------------|---------------|
| 1. | Do you understand the rights that I have just read to you? | Yes <u>H.N</u> | No _____ |
| 2. | Do you want a lawyer now? | Yes _____ | No <u>H.N</u> |
| 3. | Are you willing to answer questions and make a statement? | Yes <u>H.N</u> | No _____ |
| 4. | Do you want a lawyer during this interview? | Yes _____ | No <u>H.N</u> |

Witness

[Signature]
Subject's Signature

Date

Time

9/15/20
Date

6:15 pm
Time

Refused to sign / / _____

All the foregoing was translated into _____

By _____ Remarks: _____

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

ADVICE OF RIGHTS

Report/Citation # HA-20-00643

I am a Conservation Enforcement Officer. I want to inform you of your rights.

1. You have the right to remain silent. You do not have to answer any questions.
2. Anything you say may be used against you in a court of law.
3. You have the right to talk to a lawyer before we ask you any questions and to have him with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
5. If you decide to answer the questions now without a lawyer present, you will still have the right to stop answering at any time and talk to a lawyer.

The Advice of Rights was administered to

By

K. KERN
Conservation Enforcement Officer

Location

Honolulu DOCARE OFFICE

Date

9.14.20

Time

1840 Hrs.

WAIVER OF RIGHTS

- | | | | |
|----|--|-------------------|------------------|
| 1. | Do you understand the rights that I have just read to you? | Yes <u>Y-T.</u> | No <u> </u> |
| 2. | Do you want a lawyer now? | Yes <u> </u> | No <u>Y-T.</u> |
| 3. | Are you willing to answer questions and make a statement? | Yes <u>Y-T.</u> | No <u> </u> |
| 4. | Do you want a lawyer during this interview? | Yes <u> </u> | No <u>Y-T.</u> |

Witness

Subject's Signature

Date

Time

Date

Time

Refused to sign / /

All the foregoing was translated into

By

Remarks:

BAIL/BOND RECEIPT, ACKNOWLEDGMENT, AND NOTICE TO APPEAR

BBRA No. 30

0112213

Case No. 11A 15-20643

Arresting Agency: Kalaheo Police

State ID (SID)/Booking No. (If applicable): 11A 1741

Date: 09-15-2020

Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount	Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount
11A 1741	11A 1741	\$ 200	11A 1741	11A 1741	\$ 200
		\$			\$
		\$			\$
		\$			\$
		\$			\$

Release Based On: ☒ ROR ☐ CASH deposited by DEFENDANT ☐ CASH deposited by THIRD PARTY SURETY
☐ PAPER BOND posted by LICENSED SURETY INSURANCE COMPANY/AGENT (Attach Copy of Paper Bond and Copy of Agent's Power of Attorney)

(For Judiciary Use Only)

BAIL/BOND FOR (Defendant's Name) To Hon. J. H. H. H.

DOB: 07-21-1965 LAST 4 DIGITS OF SSN: XXX-XX- [REDACTED]

PHONE: [REDACTED]

ADDRESS: [REDACTED]

AMOUNT RECEIVED: \$

☒ ROR

CERTIFIED/CASHIER'S CHECK NO. OR POWER OF ATTORNEY NO.

APPEARANCE INFORMATION: YOU ARE TO APPEAR IN THE FOLLOWING COURT CHECKED BELOW (address on back):

☐ CIRCUIT - HILO ☐ CIRCUIT - KONA☐ FAMILY - HILO ☐ FAMILY - KONA☐ FAMILY - SOUTH KOHALAFOR DISTRICT COURT ONLY: ☐ HILO☐ PUNA at HILO☒ KONA☐ KAU at KONA☐ SOUTH KOHALA☐ HAMAKUA at SOUTH KOHALA☐ NORTH KOHALA at SOUTH KOHALA

COURT DATE AND TIME: 09-24-2020 1:30 AM/PM (circle one)

DEFENDANT'S ACKNOWLEDGMENT OF TERMS AND CONDITIONS FOR RELEASE ON BAIL OR RECOGNIZANCE

In order to be admitted to bail and released from custody or released on recognizance, I agree to comply with the terms and conditions of release on bail or recognizance set forth herein, all conditions imposed by law, and any additional conditions that a court may later impose on me. I specifically understand and agree that:

- I must appear in person for all court hearings, including the hearing set forth above. If I fail to appear, my release will be revoked, a bench warrant will be issued for my arrest, and I may be charged for bail jumping or contempt of court.
- I will remain in the State of Hawaii unless I obtain court approval to leave the jurisdiction.
- I will not commit a federal, state or local offense during the period of release.
- The court may REVOKE MY RELEASE if any term or condition of release is violated.
- If, at any time, I fail to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, any cash or bond posted for my release WILL BE FORFEITED to the State and NOT RETURNED.
- Any cash I have deposited as security for this bond shall be applied to pay any fines, restitution, costs and/or fees that I may be ordered to pay in this case.

Date 09-15-2020

Print Name of Defendant Joseph W. H. H.

Defendant's Signature

NOTIFICATION TO THIRD-PARTY SURETY OF BAIL BOND CONDITIONS/OBLIGATIONS

I have read and understand the terms and conditions of bail signed by defendant. I understand that this is a continuing bond that will remain in full force and effect, unless otherwise ordered by the court, until final determination of all proceedings in this case, including appeal. If I wish earlier discharge from liability on this bond, I must surrender Defendant to the custody of any sheriff, chief of police, or their authorized subordinates. I understand that if Defendant fails to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, judgment for the full amount of this bail bond shall be entered in favor of the State. Any request to show good cause why the court should vacate the judgment of forfeiture must be filed within thirty (30) days from the date notice of the entry of judgment in favor of the state is given via personal service or certified mail, return receipt requested.

☐ If cash was deposited as security for the full amount of this bond, the full amount will be forfeited to the State and not returned to me.☐ If a paper bond was filed, surety is required to pay the full amount of the bond to the State in execution of the judgment unless a) the court sustains the surety's motion or application submitted pursuant to HRS § 804-51 and vacates the judgment based on a showing of good cause or b) defendant is surrendered to law enforcement officials pursuant to HRS §§ 804-14, 804-41, and 804-51.

Telephone No.

Print Name of Third-Party Surety or Agent

Driver License/Other ID No.

Date

Signature of Third-Party Surety or Agent

Preferred Mailing Address of Third-Party Surety

NOTE: COPY OF PAPER BOND AND COPY OF AGENT'S POWER OF ATTORNEY MUST BE ATTACHED IF PAPER BOND FILED.

LAW ENFORCEMENT OFFICER/CLERK

Date 09-15-2020

Print Name/ID No. [REDACTED]

Officer/Clerk's Signature [REDACTED]

Agency [REDACTED]

(BAR CODE)

- (1) Establish the West Hawai'i regional fishery management area for improved management of consumptive and nonconsumptive uses of aquatic resources;
- (2) Ensure the sustainability of the State's nearshore ocean resources;
- (3) Identify areas with resource and use conflicts;
- (4) Minimize user conflicts and resource depletion in the West Hawai'i regional fishery management area, by designating fish replenishment areas and identifying other regulated areas where aquarium fish collecting is prohibited, areas where the use of gill nets as set nets is prohibited, and establishing a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed;
- (5) Establish a system of day-use mooring buoys in high-use coral reef areas and prohibit anchoring in some of these areas to prevent anchor damage to corals;
- (6) Identify areas and resources of statewide significance for protection;
- (7) Facilitate scientific research and monitoring of the nearshore resources and environment; and
- (8) Facilitate the substantive involvement of the community in resource management decisions for the West Hawai'i regional fishery management area through dialogue with community residents and resource users.

(b) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff 12/26/13]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall

apply to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore, seaward to the limit of the State's police power and management authority.

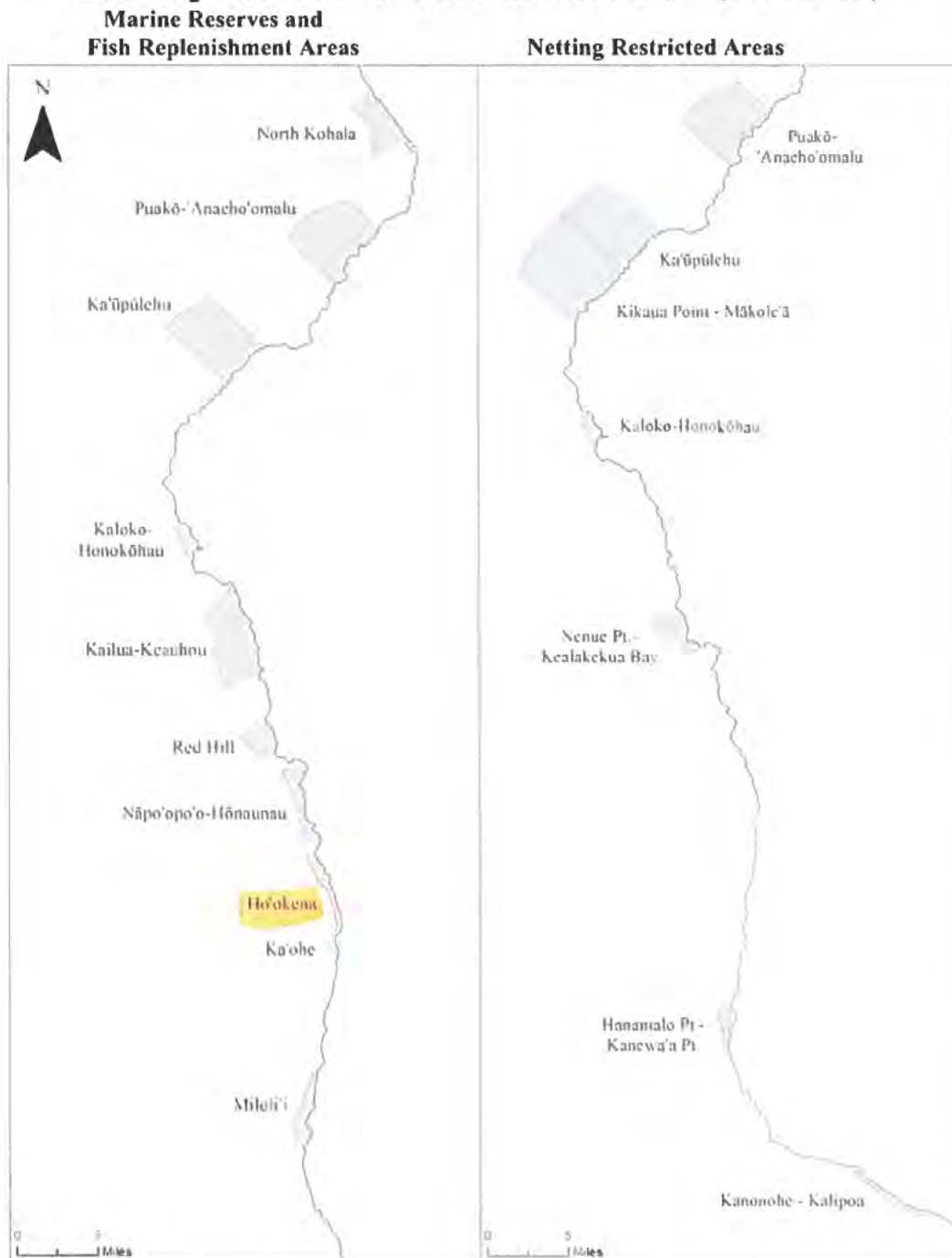
(b) The following marine reserves, fish replenishment areas, and netting restricted areas shall be established within the boundaries of the West Hawai'i regional fishery management area (as depicted in the exhibit entitled "Map of Marine Reserve, Fish Replenishment Area, and Netting Restricted Area Boundaries", dated 12/12/12, located at the end of this chapter):

- (1) Ka'ūpūlehu marine reserve, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of Kikaua Point (south of Kūki'o Bay);
- (2) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
- (3) Puakō-'Anaeho'omalu fish replenishment area, identified on shore to the north by the southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa);
- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālolli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwa'a Point and to the south by Noio Point;
- (5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;
- (6) Red Hill fish replenishment area, identified

- on shore to the north at Nenu Point and to the south by Keawakāheka Point;
- (7) Nāpo'opo'o-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Pu'uhonua o Hōnaunau (Ki'ilae);
- (8) Ho'okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka'ū Loa Point;
- (9) Ka'ohe Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Ka'ū Loa Point, and to the south by signage north of 'Au'au Point;
- (10) Miloli'i fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki'o Point;
- (11) Kikaua Point-Mākole'ā Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and to the south by Mākole'ā Point (near Kekaha Kai State Park);
- (12) Nenu Point-Kealakekua Bay netting restricted area, identified on shore to the north by the northern boundary of the Red Hill fish replenishment area and to the south by the northern boundary of the Kealakekua Bay marine life conservation district;
- (13) Hanamalo Point-Kanewa'a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu'a Bay, and to the south by Kanewa'a Point, South Kona; and
- (14) Kanonone-Kalīpoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalīpoa, Ka'ū.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude

**Map of Marine Reserve, Fish Replenishment Area, and
Netting Restricted Area Boundaries* (12/12/12)**



*Maps and tables do not reflect regulated areas and their specific prohibitions (including gear restrictions) that are defined in other chapters, as described in section 13-60.4-5 (c)

- (5) Kealakekua Bay marine life conservation district, as described in chapter 13-29;
- (6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
- (7) Kīholo Bay fisheries management area, as described in chapter 13-60;
- (8) Kailua Bay fisheries management area, as described in chapter 13-52;
- (9) Keauhou Bay fisheries management area, as described in chapter 13-57;
- (10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai'i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai'i regional fishery management area any activity otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State. [Eff 12/26/13; am 7/29/16] (Auth: HRS §§187A-5, 188-53, 188F-6, 190-3) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6, 190-3)

§13-60.4-3 Definitions. As used in this chapter unless otherwise provided:

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"Aquarium purposes" means to hold aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public

aquatic life can be fished for, caught, or harvested, shall be construed as taking.

"Total length" means the length of a fish measured from the tip of the snout to the tip of the longer lobe of the caudal (tail) fin. The length measurement shall be a straight-line measure, not measured over the curvature of the body of the fish.

"White list" means a list of species of marine life that may be taken for aquarium purposes. [Eff 12/26/13; am 7/29/16] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area. While within the West Hawai'i regional fishery management area, no person shall:

- (1) Take, kill, possess, sell, or offer for sale, any specimen of the following species: *Aetobatus narinari* (spotted eagle ray), *Carcharhinus amblyrhynchos* (gray reef shark), *Carcharhinus melanopterus* (blacktip reef shark), *Cassis cornuta* (horned helmet), *Charonia tritonis* (Triton's trumpet), *Dasyatis hawaiiensis* (Hawaiian stingray), *Dasyatis lata* (broad stingray), *Pteroplatytrygon violacea* (pelagic stingray), *Galeocerdo cuvier* (tiger shark), *Rhincodon typus* (whale shark), or *Triaenodon obesus* (whitetip reef shark);
- (2) Possess more than five *Zebrasoma flavescens* (yellow tang) larger than 4.5 inches in total length, or possess more than five *Zebrasoma flavescens* smaller than two inches in total length;
- (3) Possess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes:
 - (A) Between sunset and sunrise, provided that collecting gear or collected aquatic life may be possessed after sunset or before sunrise if notification by phone is made to the Division of Aquatic Resources West

Hawai'i (DAR-Kona) office prior to sunset. The notification shall include the names of individuals who plan to possess the gear or aquatic life and the location where the possession will take place;

- (B) Without holding a valid West Hawai'i aquarium permit issued pursuant to section 13-60.4-7(a);
 - (C) In violation of the terms and conditions of a West Hawai'i aquarium permit issued to that person; or
 - (D) While occupying any vessel that does not conform to the registration and marking requirements of section 13-60.4-7(d);
- (4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license number or numbers of the person or persons owning, possessing or using the equipment;
 - (5) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6; or
 - (6) Engage in or attempt to engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time. [Eff 12/26/13]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-5 Activities prohibited within selected areas. (a) No person may engage in fish feeding while within any of the marine reserves, fish replenishment areas, or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

(b) While within the fish replenishment areas described in section 13-60.4-2(b)(2) to (10), or while within any of the areas listed in section 13-60.4-2(c) other than the Kiholo Bay fisheries management area,

no person may:

- (1) Collect aquatic life for aquarium purposes; or
- (2) Possess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while onboard a vessel in active transit through the areas, provided that no collecting gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in section 13-60.4-2(b) and in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Marine Reserve and Fish Replenishment Area Boundaries", dated 12/12/12, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 12/12/12:

- (1) Puakō-'Anaeho'omalu fish replenishment area;
- (2) Kikaua Point-Mākole'ā netting restricted area (Kekaha Kai State Park);
- (3) Nenua Point (Red Hill fish replenishment area)-Kealahakua Bay netting restricted area;
- (4) Hanamalo Point-Kanewa'a Point netting restricted area;
- (5) Kanonohe-Kalipoa netting restricted area; and
- (6) Kaloko-Honokōhau fish replenishment area, except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, that is registered and used in compliance with section 13-60.4-6.

(d) Except as provided in subsection (e), and subject to all other applicable laws, while within the Ka'ūpūlehu marine reserve no person may:

- (1) Take or attempt to take any specimen of aquatic life, provided that the following species may be taken by hook-and-line seaward of the twenty fathom (120 feet) depth contour: *Pristipomoides filamentosus*

three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession under an aquarium permit and a West Hawai'i aquarium permit issued under section 13-60.4-7(a). [Eff 12/26/13]
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6, 199-7, 712A-6)

§13-60.4-7 Aquarium collecting permit and vessel registration requirements. (a) West Hawai'i aquarium permit. The department may issue West Hawai'i aquarium permits authorizing persons to engage in aquarium collecting activities for species listed in subsection (b) and to use fine meshed traps and nets (other than throw nets) to collect those species in the West Hawai'i regional fishery management area, notwithstanding section 13-75-14, subject to terms and conditions the department deems necessary for the management of the area and its resources. No person, unless exempted from provisions of this chapter by the issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai'i regional fishery management area without first having been issued and possessing a West Hawai'i aquarium permit in addition to a valid State of Hawai'i aquarium fish permit. Permits shall be valid for one year from the date of issuance unless revoked sooner, and are non-transferable. In addition to applying any other penalties provided by law, the department may revoke any West Hawai'i aquarium permit for any infraction of these rules or the terms and conditions of the permit, and any person whose permit has been revoked shall not be eligible to apply for another West Hawai'i aquarium permit until the expiration of one year from the date of revocation.

(b) Aquarium species white list. In addition to other regulations deemed necessary for the management of the West Hawai'i regional fishery management area, an aquarium permit holder may only take or possess specimens of the following species of fish for aquarium purposes while within the West Hawai'i regional fishery management area: *Acanthurus achilles*

(Achilles tang), *Acanthurus dussumieri* (eyestripe surgeonfish), *Acanthurus nigricans* (goldrim surgeonfish), *Acanthurus nigrofuscus* (brown surgeonfish), *Acanthurus olivaceus* (orangeband surgeonfish), *Acanthurus thompsoni* (Thompson's surgeonfish), *Anampses chrysocephalus* (psychedelic wrasse), *Canthigaster jactator* (whitespotted Toby), *Centropyge fisheri* (Fisher's angelfish), *Centropyge potteri* (Potter's angelfish), *Cephalopholis argus* (peacock grouper), *Chaetodon kleinii* (blacklip butterflyfish), *Chaetodon miliaris* (milletseed butterflyfish), *Chaetodon multicinctus* (multiband butterflyfish), *Chaetodon quadrimaculatus* (fourspot butterflyfish), *Chaetodon tinkeri* (Tinker's butterflyfish), *Cirrhitilabrus jordani* (flame wrasse), *Cirrhitops fasciatus* (redbarred hawkfish), *Coris gaimard* (yellowtail Coris), *Ctenochaetus hawaiiensis* (chevron tang), *Ctenochaetus strigosus* (goldring surgeonfish, kole), *Dascyllus albisella* (Hawaiian Dascyllus), *Forcipiger flavissimus* (forcepsfish), *Gomphosus varius* (bird wrasse), *Halichoeres ornatissimus* (ornate wrasse), *Hemitaurichthys polylepis* (pyramid butterflyfish), *Lutjanus kasmira* (bluestripe snapper), *Macropharyngodon geoffroy* (shortnose wrasse), *Melichthys niger* (black Durgon), *Naso lituratus* (orangespine unicornfish), *Ostracion meleagris* (spotted boxfish), *Paracirrhites forsteri* (blackside hawkfish), *Pseudanthias hawaiiensis* (Hawaiian longfin Anthias), *Pseudocheilinus octotaenia* (eightline wrasse), *Pseudocheilinus tetrataenia* (fourline wrasse), *Pseudojuloides cerasinus* (smalltail wrasse), *Sufflamen bursa* (lei triggerfish), *Thalassoma duperrey* (saddle wrasse), *Xanthichthys auromarginatus* (gilded triggerfish), and *Zebrasoma flavescens* (yellow tang); provided further that:

- (1) No *Zebrasoma flavescens* (yellow tang) may be taken or possessed in violation of section 13-60.4-4(2);
- (2) No more than five *Ctenochaetus strigosus* (goldring surgeonfish or kole) larger than four inches in total length may be taken per day or possessed at any time; and
- (3) No more than ten *Acanthurus achilles* (Achilles tang) may be taken per day, or possessed at any time.

(c) Aquarium collecting vessel registration and marking requirements. All aquarium collecting vessels shall:

- (1) Be registered every year with the Division of Aquatic Resources West Hawai'i (DAR-Kona) office to take aquatic life for aquarium purposes within the West Hawai'i regional fishery management area. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for each vessel;
- (2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless otherwise specified, the "AQ" letters shall be no less than six inches high and three inches wide in either black or a color that contrasts with the background;
- (3) Fly a "stiffened" flag or pennant from the vessel with the letter "A" as specified by the department. The flag or pennant shall be provided at cost to aquarium permittees as specified by the department. The flag or pennant shall be displayed and clearly visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard;
- (4) Display a dive flag at all times when divers are in the water; and
- (5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.

(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area

commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.

(e) Nothing in this chapter shall prevent the department from establishing another control date. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-8 Penalty. Any person violating any provision of this chapter, or any term or condition of any permit issued pursuant to this chapter, shall be subject to the provisions of sections 187A-12.5 and 188-70, Hawaii Revised Statutes, or as may be otherwise provided by law. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

[§187A-12.5] General administrative penalties. (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 5 of title 12 or any rule adopted thereunder.

(b) For violations involving threatened or endangered species, the administrative fines shall be as follows:

(1) For a first violation, a fine of not more than \$5,000;

(2) For a second violation within five years of a previous violation, a fine of not more than \$10,000; and

(3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$15,000.

(c) For all other violations the administrative fines shall be as follows:

(1) For a first violation, a fine of not more than \$1,000;

(2) For a second violation within five years of a previous violation, a fine of not more than \$2,000; and

(3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$3,000.

(d) In addition to subsection (b), a fine of up to \$5,000 may be levied for each specimen of threatened or endangered aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(e) In addition to subsection (c), a fine of up to \$1,000 may be levied for each specimen of all other aquatic life taken, killed, or injured in violation of subtitle 5 of title 12 or any rule adopted thereunder.

(f) Any criminal penalty for any violation of subtitle 5 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from recovering additional administrative fines, fees, and costs, including attorney's fees and costs. [L 1998, c 243, §1]

- (5) Duplicate license, \$0.50.
- (d) Beginning September 1, 1999, the fee for the freshwater game fishing license shall be:
 - (1) Minors between nine and fifteen years of age, \$3;
 - (2) Residents over fifteen and under sixty-five years of age, \$5;
 - (3) Persons sixty-five years of age and older, free;
 - (4) Persons not qualifying under (1), (2), or (3) but over fifteen years of age, \$25, except that:
 - (A) Members of the armed forces of the United States on active duty in the State whether qualifying as a resident or not, and their spouse and children fifteen years of age and over, \$5;
 - (B) 7-Day tourist license which is valid for only seven days from the date of issue, \$10;
 - (C) Tourist license which is valid for only thirty days from the date of issue, \$20;
- (5) Duplicate license, \$1. [Eff 8/12/93; am 1/15/99] (Auth: HRS §§187A-5, 188-50) (Imp: HRS §§187A-5, 188-50)

SUBCHAPTER 3

COMMERCIAL FISHING

§13-74-20 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license. Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall

obtain a commercial marine license.

(b) Licenses to persons with proof of identity to engage in the activities described in subsection (a) shall require the person's name, address, age, place of birth, length of residence in the State, height, weight, color of hair and eyes, citizenship, and such other information as the department may require.

(c) The fee for the issuance or renewal of a commercial marine license shall be \$100. The fee for a duplicate license shall be \$10.

(d) No person may:

- (1) Renew a commercial marine license more than two months prior to its expiration date; or
- (2) Be issued more than one commercial marine license at any one time.

(e) The department may require persons issued the commercial marine license to submit reports of their fishing activity. Such reports shall be submitted to the department monthly; provided that persons taking bottomfish as defined in chapter 13-94, in the main Hawaiian islands, shall, in addition to their monthly report for species other than bottomfish, submit trip reports of their bottomfish fishing activity if requested. The monthly and trip reports shall be subject to section 13-74-2, sections 189-3 and 189-3.5, HRS, and as may be otherwise provided by law. [Eff 8/12/93; am 1/15/99; am 10/18/10; am 1/7/18] (Auth: HRS §§189-2, 189-3, 189-3.5) (Imp: HRS §§189-2, 189-3, 189-3.5)

§13-74-21 Northwestern Hawaiian Islands fishing permit. (a) The department may issue permits to commercial marine licensees who own or operate a vessel deemed capable by the department for effectively taking marine life within the Northwestern Hawaiian Islands, to fish for such marine life, or utilize methods or appliances which may be regulated or prohibited elsewhere within the State. The department may limit the number of permits issued to take marine life in any particular area and such

§13-75-12.4 Lay nets. (a) It is unlawful for any person within the jurisdiction of state waters to:

- (1) Possess or use a lay net that has not been registered with the department;
 - (2) Possess or use a lay net which is, or lay nets which, except as provided in section 13-60.4-6, are:
 - (A) Longer than one hundred twenty-five feet in length when set end to end, and more than seven feet in stretched height; and
 - (B) Of less than two and three-fourths inches stretched mesh, except as provided in section 13-52-2(2)(A);
 - (3) Possess or use a multi-panel lay net;
 - (4) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each end of both the net float line and the net lead line for a total of four attachment points on each lay net; or
 - (5) Fish with more than one lay net at a time.
- (b) It is unlawful for any person using the lay net fishing method to:
- (1) Use a lay net that is not marked by surface buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;
 - (2) Use a lay net within two hundred fifty feet of another lay net, except as provided in section 13-60.4-6;
 - (3) Use a lay net in water greater than twenty-five feet in depth; provided that a person with a commercial marine license may use a lay net in water depths up to eighty feet, except as provided in section 13-60.4-6;

mental disability is incapable of operating the vessel under the prevailing circumstances. [Eff 2/24/94]
(Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

§13-244-13 Interference with navigation. (a) No person shall operate any vessel in a manner which shall unreasonably or unnecessarily interfere with other vessels or with the free and proper navigation of the waterways of the State.

(b) Anchoring under bridges or in restricted channels shall constitute such interference if unreasonable under the existing circumstances.

(c) A motorboat underway shall keep out of the way of a vessel engaged in fishing. [Eff 2/24/94]
(Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

§13-244-14 Overloading. No vessel shall be loaded with persons or cargo beyond its safe carrying capacity taking into consideration weather and other existing operating conditions. Capacity and loading of vessels shall be in conformance with 33 CFR Part 183. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

§13-244-15 Overpowering. No vessel shall be equipped with any motor or other propulsion machinery beyond its safe power capacity taking into consideration the type and construction of the vessel and other existing operating conditions. Capacity and horsepower limitations shall be in conformance with 33 CFR Part 183. [Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

§13-244-15.5 Operation of power driven vessels.
(a) Any person operating a power driven vessel on the waters of the State shall be required to possess a certificate of completion from a National Association of State Boating Law Administrators (NASBLA) approved

course on the safe use and operation of a power driven vessel that contains a component on Hawaii waters approved by the department. Exempt from this requirement are persons who:

- (1) Possess a valid merchant mariner credential to operate a vessel issued by the United States Coast Guard pursuant to 46 C.F.R. Part 10;
- (2) Operate a thrill craft in a commercial thrill craft zone as authorized by the State;
- (3) Operate a motorboat that is ten horsepower or less; or
- (4) Are on a voyage originating outside of the State and remain in the State less than sixty calendar days.

(b) A person under sixteen years of age shall not operate a power driven vessel on the waters of the State unless the person possesses a certificate of completion and is also accompanied on-board and directly supervised by a person twenty-one years of age or older who holds the required certificate of completion.

(c) A person or the person's responsible managing employee or agent engaged in the business of renting or leasing power driven vessels shall not rent or lease a power driven vessel to any person for operation on the waters of the State unless the person:

- (1) Meets all the requirements of this section by receiving a safety briefing provided by the rental or leasing business that is approved by the department; and
- (2) Is identified on the rental or lease agreement for a power driven vessel by name and age. A person or the person's agent or employee renting or leasing power driven vessels who fails to request and inspect certificates or evidence of exemption is in violation of this section.

(d) A person who is operating a power driven vessel on any waters of the State and who is stopped

§13-243-1 Equipment required by vessels on state waters. (a) This chapter applies to all vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel, except Hawaiian design racing canoes, racing shells, rowing sculls, and racing kayaks. Navigational lights, sound producing devices, personal flotation devices, ventilation, backfire flame control, and distress signals shall conform to the standards set forth in U.S. Coast Guard Navigation Rules, COMDTINST M16672.2B, of August 17, 1990 and as revised thereafter; U. S. Coast Guard Boating Standards Manual COMDTINST M16761.2B, dated March 26, 1991 and as revised thereafter; 33 CFR Parts 175, 177, 181, and 183; and 46 CFR Part 25 as they existed on October 1, 1992 and as revised thereafter. The standards above are incorporated in this chapter by reference. Copies may be obtained from the 14th Coast Guard District. They are also available for inspection at the division of boating and ocean recreation, department of land and natural resources, 333 Queen St., Suite 300, Honolulu, Hawaii.

(b) Notwithstanding the exemptions outlined in subsection (a), no person shall operate or anchor offshore a recreational vessel unless all children under the age of thirteen wear a properly fitted personal flotation device whenever the vessel is underway on the ocean waters or navigable streams of the state or when moored or anchored offshore in a non-designated offshore mooring area, unless the children are below decks or in an enclosed cabin.

(c) All thrill craft operators and passengers shall be required to wear a personal flotation device when riding a thrill craft.

(d) For purposes of this section, the term "vessel," excludes surfboards.

(e) Fines and penalties shall be as provided in sections 200-14, 200-14.5, and 200-25, HRS. Prosecution of offenders shall be as provided by law. [Eff 2/24/94; am 7/5/03] (Auth: HRS §§200-4, 200-14, 200-14.5, 200-24, 200-25) (Imp: HRS §§200-4, 200-14, 200-14.5, 200-24, 200-25)

§707-714 Reckless endangering in the second degree. (1) A person commits the offense of reckless endangering in the second degree if the person:

- (a) Engages in conduct that recklessly places another person in danger of death or serious bodily injury; or
- (b) Intentionally discharges a firearm in a populated area, in a residential area, or within the boundaries or in the direction of any road, street, or highway; provided that the provisions of this paragraph shall not apply to any person who discharges a firearm upon a target range for the purpose of the target shooting done in compliance with all laws and regulations applicable thereto.

(2) Reckless endangering in the second degree is a misdemeanor. [L 1972, c 9, pt of §1; am L 1990, c 62, §1; gen ch 1992; am L 2006, c 230, §30]

Cross References

Definition of recklessly, see §702-206.

Definition of "widely dangerous means", see §708-800.

Case Notes

Statute essentially the equivalent of federal statute on "assault with dangerous weapon with intent to do bodily harm" set out in 18 U.S.C. §113(c). 376 F. Supp. 1024 (1974).

This offense is a lesser included offense of attempted murder under §701-109(4). 62 H. 637, 618 P.2d 306 (1980).

Based on testimony of a vendor and dirt biker, there was substantial evidence upon which a jury could have found that defendant discharged a firearm in a populated area, supporting defendant's conviction under this section. 106 H. 62 (App.), 101 P.3d 671 (2004).

Cited: 55 H. 531, 534, 523 P.2d 299 (1974).

COMMENTARY ON §§707-713 AND 707-714

The Code follows the lead of the Model Penal Code in providing two general sections for conduct which recklessly endangers human life.

[1] Previous Hawaii law covered, as does the law of most jurisdictions, [2] such cases of reckless endangering on an ad hoc basis. [3] A quick perusal of such statutes reveals that they all have in common the reckless endangering of human life. The Code obviates the need for special legislation on each dangerous instrument or act. Rather, all conduct so endangering human life or limb is made a misdemeanor.

The aggravated offense of reckless endangering in the first degree, §707-713, is reserved for cases where the actor employs "widely dangerous means." Widely dangerous means, as defined in

§710-1026 Resisting arrest. (1) A person commits the offense of resisting arrest if the person intentionally prevents a law enforcement officer acting under color of the law enforcement officer's official authority from effecting an arrest by:

- (a) Using or threatening to use physical force against the law enforcement officer or another; or
- (b) Using any other means creating a substantial risk of causing bodily injury to the law enforcement officer or another.

(2) Resisting arrest is a misdemeanor. [L 1972, c 9, pt of §1; gen ch 1993; am L 2001, c 91, §4]

COMMENTARY ON §710-1026

Resisting arrest is one of the commonest forms of obstructing government operation. The Code deals specifically with resisting arrest out of a desire to confine the offense to forcible resistance that involves some substantial danger to the person. Mere non-submission ought not to be an offense. One who runs away from an arresting officer or who makes an effort to shake off the officer's detaining arm might be said to obstruct the officer physically,[1] but this type of evasion or minor scuffling is not unusual in an arrest, nor would it be desirable to make it a criminal offense to flee arrest. In this case the proper social course is to authorize police pursuit and use of reasonable force to effect the arrest. If the actor is captured, the actor may be convicted of the underlying offense. If conviction cannot be had, it would be a grave injustice to permit prosecution for an unsuccessful effort, by an innocent person, to evade the police.[2]

Note that the arrest may be either of the actor or of a third person: the social and individual harms involved are the same in either case. Moreover, it is no defense to a charge under this section that the officer was making an unlawful arrest, provided the officer was acting under color of law. American jurisdictions have almost universally rejected the common-law doctrine that it is permissible to resist an unlawful arrest with as much force as one has at one's disposal. In a well-ordered society, the evils involved in allowing such resistance far outweigh the infrequent and usually minor inconvenience of submitting to any arrest made under color of law and disputing it within the legal framework. The requirement that the arrest be made under color of the officer's official authority obviates the necessity for a separate section barring such a defense.

The previous Hawaii law penalizing interference with an arresting police officer was similar to this section of the Code, except that the former law did not require the use of force or the risking of bodily injury. The penalties are roughly the same.[3]

Cases of interference which do not involve force or risk of bodily injury, but which present serious social dangers are included under